IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS Nos. 6184/95 to 6203/95, 5289/95
5290/96, 410/98 to 417/98, 2073/98 to 2078/98
And 1166/97; 269/97 to 275/97, 910/96 to 920/96,
1017/96 to 1050/96, 7/97 to 13/97, 2358/97 to
2359/97 And 2546/97; 989/98 to 995/98, 1880/97 to
1894/97 And 2061/98 to 2066/98.

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

DEPUTY COLLECTOR

Versus

LALUBHAI KESHAVBHAI

Appearance:
Mr.S.N.Shelat, learned Addl.Advocate General with
Mr.P.G.Desai, learned G.P. for the appellants in
First Appeals Nos.6184/95 to 6203/95, 269/97 to 275/97
989/97 to 995/97, 7/97 to 13/97, 2073/98 to 2078/98,
410/98 to 417/98.

Mr.S.N.Shelat, learned Addl.Advocate General with
Mr.L.R.Pujari, learned AGP for the appellants
in First Appeal Nos.1017/96 to 1050/96, 1880/97
to 1894/97, 910/96 to 920/96.

Mr.S.N.Shelat, learned Addl.Advocate General with
Ms.Ami Yagnik, learned A.G.P. for the appellants
in First Appeal Nos.2061/97 to 2066/97, 1116/97, 5289/96,
5290/96, 2358/97, 2359/97, 2546/97.

Mr.Nitin M.Amin, Mr.Sanjay M.Amin, Mr. Y.S.Lakhani,
Mr. P.C.Kavina, Mr.Gaurang Bhatt and Mr.M.D.Parikh
for the respondents - claimants.
Mr.P.J.Kanabar for added respondents Nos.2 and 3 in
First Appeal No.272/97

CORAM : MR.JUSTICE M.R.CALLA and
MISS JUSTICE R.M.DOSHIT
Date of decision: 04/05/99

C.A.V.COMMON JUDGEMENT (Per: M.R.CALLA,J)

1. This batch of 127 First Appeals is directed against the order passed in Land Reference Cases decided by the Assistant District Judge, Amreli on various dates with regard to the claimants of villages Amreli, Bakshipur and Giriya, whose lands had been acquired for "THEBI IRRIGATION SCHEME". In each and all these appeals before us, the learned counsel for appellants has challenged enhanced rate of compensation awarded by the Reference Court. Whereas all these Appeals relate to the lands acquired for the same Scheme and the matters involve identical questions based on the facts of each group in which the common orders were passed by the Court while deciding the Land Reference Cases, we propose to decide all these 127 First Appeals by this common Judgment and order. We have divided these Appeals into 14 groups in all with reference to the concerned village and the common order passed by the Reference Court in each of these fourteen groups.

1.1 At the very outset it was pointed out on behalf of the claimants (respondents) that in an identical case i.e. First Appeal No.3119/97 a Division Bench of this Court (Coram: Y.B.Bhatt and C.K.Buch,JJ) had already dismissed the Appeal summarily on 23.2.98 and, therefore, these Appeals may also be dismissed. However, Mr.S.N.Shelat, learned Addl.Advocate General, has submitted that the order dt.23.2.98 has not attained finality and that it was dismissed summarily and he urged that these matters may be heard separately. The contents of this order dt.23.2.98 are reproduced as under:-

"CORAM: MR.JUSTICE Y.B.BHATT and
MR.JUSTICE C.K.BUCH

Date of Order: 23/2/98

ORAL ORDER

Heard ld.counsel for the appellants.

This appeal has been filed under Sec.54 of the Land Acq.Act read with Sec.96 of the C.P.Code by the State challenging the impugned award passed by the District Court under Sec.18 of the said Act.

The impugned judgment, taken in it overall perspective, is in our opinion, not assailable. We agree with the assessment of the evidence on the part of the Reference Court, conclusions drawn therefrom and the findings of fact recorded.

The Reference Court has relied upon its decision in a group of Land Acq.Cases decided under Sec.18 of the said Act, the judgment whereof is at Exh.11 in the record of the present reference. There is no dispute that it is a comparable instance. The only contention raised is that the location of two villages in question is different or that the same are located at some distance from each other. Only technically this may seem to be true, but that by itself does not make the same not comparable nor would it result in any appreciable difference so far as determination of the market value is concerned. This aspect has been dealt with in para-9 & 10 of the impugned judgment. Ld. counsel for the appellant is unable to assail the logic and reasoning of the Reference Court in this context.

This appeal is, therefore, summarily dismissed.

Sd/-
(Y.B.BHATT,J)

Sd/-
(C.K.BUCH,J)"

In the facts and circumstances of this case, we find that whereas the present Appeals listed before us have already been admitted, the same are required to be considered separately in detail on merits and, therefore, we have heard these matters in 14 classified groups and proceed to decide the same accordingly.

1.2 Before we take up each group of the Appeals as

under, it may be mentioned that on behalf of the appellants as well as claimants certain cases have been cited before us and we find it appropriate to refer to the general principles which have been decided in these cases which we find to be relevant for the purposes of the cases at hand, as have been referred to by the learned counsel for the parties before us.

(i) In case of Tarlochan Singh v. State of Punjab, reported in JT 1995(2) SC 91, it was held that sale transactions of small extents of land are absolutely and totally irrelevant and cannot form the basis to determine the compensation.

(ii) In case of P.Ram Reddy V. Land Acquisition Officer, Hyderabad, reported in JT 1995(1) SC 593 it was held that while considering the market value fetched by sale of small extents, the Court has to consider the allowances to be made which distinguish the acquired land from the retail plots sold.

(iii) In the case of Land Acquistion officer, Chittoor v. L.Kamalamma, reported in AIR 1998 SC 781, it was held that in case of acquisition of large chunks of land, the sale transactions in respect of small extent of land can be relied upon but only after making appropriate deductions and further that when a land is acquired, which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid while in respect of the lands on the interior side compensation should be at lower rate, may not stand to reason because when sites are formed those abutting the main road may have its advantages as well as disadvantages. Many a discerning customer may prefer to stay in the interior and far away from the main road and may be willing to pay reasonably higher price for that site. One cannot rely on the mere possibility so as to indulge in a meticulous exercise of classification of the land when the entire land was acquired in one block and, therefore, classification of the same into different categories does not stand to reason.

(iv) In the case of Union of India v. Mangatu Ram, reported in AIR 1997 SC 2704, the question as to whether the belting is necessary was answered by

the Supreme Court, ofcourse in the circumstances of the case before the Supreme Court, to the effect that when a large extent of land under acquisition comprises of lands of several persons and some lands are abutting the main road and some lands are in the interior, the same would not have the uniform rate of market value. Necessarily, reasonable demarcation/ classification should be made before determination of the compensation.

(v) In the case of Union of India v. A.Ajit Singh, reported in AIR 1997 SC 2669, the Supreme Court has observed in para 5 that the High Court in the judgment has noted that the lands are situated in the developed area and are very near to the developed localities belonging to the private parties and Government. Therefore, it possesses the potential value for use for building purposes. The determination of the market value on the basis of such consideration was not vitiated by any error of principle.

(vi) In the case of Special L.A.O., Karnataka Housing Board v. P.M. Malappa, reported in AIR 1997 SC 3661, it has been held that the determination of compensation should be based on the potential value of the land existing as on the date of the Notification and not after subsequent developments had taken place.

(vii) In the case of Karan Singh v. Union of India, reported in AIR 1997 SC 3889 it has been held that, for the purpose of determination of the market value of the acquired land in case of absence of evidence on transaction of sale of land on or few days before Notification under S.4, under certain conditions, post- notification transactions of sales of lands can be relied upon in determining the value of the acquired land. However, it must be shown by reliable evidence that there was no upward rise in price of land during period of issue of notification and date of sale transaction and further that the award or judgment of the Court may be made the basis for determining value of acquired land, if such judgment or award is previous to Notification under S.4. In para 5 of the Judgment it has been observed that sale of land on or about the issue of notification under S.4 of the Act is stated to be the best piece of evidence for determining the

market value of the acquired land. In absence of such evidence contemporaneous transactions in respect of lands which had similar advantages and disadvantages would be the good piece of evidence for determining the market value of the acquired land. In case the same is also not available, the other transaction of land having similar advantages nearer to the date of notification under S.4 of the Act would guide in determining the market value of acquired land.

(viii) In the case of Special Deputy Collector v. Kurra Sambasiva Rao, reported in AIR 1997 SC 2625, it was held that, what is fair and reasonable and adequate market value is always a question of fact depending on the evidence adduced, circumstantial evidence, and probabilities arising in each case. The guiding star or the acid test would be whether a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of the notification under S.4(1) of the Act; but not an anxious buyer dealing at arm's length with throw away price, nor facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value. The Judge should sit in the arm chair of the said willing buyer and seek an answer to the question whether in the given set of circumstances as a prudent buyer he would offer the same market value which the court proposed to fix for the acquired lands in the available market conditions. It was also held that sale transaction in respect of acquired land to which the claimant himself is a party is the best evidence and sale transactions of neighbouring lands are also relevant.

(ix) In the case of Jai Prakash v. Union of India, reported in AIR 1997 SC 2237, it was held that higher compensation given for lands situated in neighbouring villages is not a ground to claim same compensation. High Court fixing compensation after considering all relevant facts, no interference was required.

(x) In the case of Mehta Ravindrarai Ajitrai v. State of Gujarat, reported in AIR 1989 SC 2051

while considering the question of relevancy of sale of adjacent land for the purpose of determining the market value, it was held that agreement of sale five months after S.4 Notification could not be ignored when there was no sharp or speculative rise in price after acquisition.

We may point out that while considering each group of the matters hereinafter, we have kept in mind the relevant principles to which we have made a brief reference, as above and have decided the matters applying these principles on the facts and circumstances and the material available in each of the cases.

2. First Appeals Nos.6184/95 to 6203/95 (20 in all) relating to village Amreli are directed against the common order dt.6.5.95 passed in 20 Land Reference cases i.e. main Land Reference Case No.171/93 with 163/93 to 170/93, 172/93 to 181/93, 183/93 (20 in all). For acquisition of the lands concerned in these cases, the Notification under S.4 of the Land Acquisition Act (herein-after referred to as 'the Act') was issued on 15.3.90, the Notification under S.6 was issued on 11.7.91 and the Award was passed by the Land Acquisition Officer on 23.7.93 granting the compensation to the claimants at the rate of Rs.3.50 Ps. per sq.mt. and Rs.5/- per sq.mt. The claimants felt aggrieved and presented Land Reference Cases under S.18 of the Act demanding compensation at the rate of Rs.200/- per sq.mt. The Reference Court, in these cases, has held that the claimants were entitled to the compensation at the rate of Rs.75/- per sq.mt.

2.1 While assailing the Reference Court's common order dt.6.7.95 in these Appeals, it has been submitted that the land in question situated at a distance of 1 to 2 Kms. from the western bank of village Thebi was not comparable with the land concerned in the sale instances cited by the claimants, which pertain to the land near Chital Road of Amreli city. The land near to Chital Road of Amreli City is fully developed land in a posh area of Amreli city. The land, which has been acquired, is situated on the western bank of river Thebi while the land of the instances relied upon by the claimants is on the eastern bank, which is a fully developed area. There is no scope of development of the land on the western bank. It has also been submitted that in this case the acquisition is for a large area as against the sale instances cited by the claimants, which were of small

plots. Reference was made to the deposition of Ramniklal Bachhubhai Exh.80 in support of the case that the acquired land is situated outside the municipal limits of Amreli at a distance of 1 to 2 Kms. from Amreli and Chital Road and that the lands acquired are of agricultural lands. Reference was made to sale deeds Exhs.86 to 100. That potentiality of the land situated on the eastern bank of the river Thebi is much more in comparison to the lands situated on the western bank. It has also been submitted that the evidence of Bharat Kantilal Exh.47 and sale instance Exh.40 and that of Bhimji Rami Exh.77 and the Valuation Report Exh.78 could not be relied upon. The Reference Court has erred in appreciating the evidence.

2.2 So far as the location of the land is concerned, there is no dispute that it is situated on the western bank of river Thebi and outside the municipal limits of Amreli but it is also established at the same time from the evidence of Ramniklal Bachhubhai Exh.80, Add. Assistant Engineer of Amreli on behalf of the appellant that the acquired land was only one and half to two Kms. from Amreli-Chital Road. Merely because he has stated that there was no possibility of development of this area, it cannot be accepted that the land in question, which is so near to the Amreli, is not likely to develop. Amreli is a District Head Quarter with various District Offices, modern facilities such as Schools, colleges, medical services roads and telephones etc. The Reference Court has also noted that the State Highway is passing through Amreli and it is connected with all sort of transportation facilities with cities like Ahmedabad and Bombay and Amreli District cannot be aid to be a backward District. In such cases, the mere location on the other bank of the river would not make a very significant difference, more particularly when the distance from the land concerned in the sale instances, relied upon by the claimants, is as short as 1 to 2 Kms. Instances are not lacking in which our own High Court and the Supreme Court has also considered the sale deed documents in respect of the lands situated within 10 Kms. area of the lands under acquisition situated in other villages to be relevant for the purpose of determining the value of the land under acquisition. There is no evidence on record to show that the Dam, which is being constructed on river Thebi, is only at a distance of half Km. from Chital road and this fact has been confirmed by the appellant's witness Ramniklal Bachhubhai in his cross-examination at page 419 of the paper book. The witness Bhikabhai Rami Exh.77, who was examined by the claimants and who had proved the Valuation Report Exh.78, has been working as

Government approved Valuer for last 15 years and he has stated that before preparing the Valuation Report Exh.78, five earlier sale deeds of the lands situated nearby the land under acquisition, as also the aspects of future development of the land under acquisition, has been scrutinised by him and the eligibility for compensation of the land under acquisition has been found to be at Rs.100/- per sq.mt. He has also taken into consideration the sale deeds of land transactions for the year 1988 to 1990 while preparing the Valuation Report Exh.78 and we do not find any reason to disbelieve this witness who is a Government Approved Valuer and whose testimony has remained untrammeled. May be that the market value in case of small plots in a developed area is more than that in the case of the acquisition of a large area, but that by itself cannot be a decisive factor to ignore the market value of identical land in the areas in the vicinity. On behalf of the appellants, reference has been made to Exhs.86 to 100. No competent witness was examined to prove the sale instances through these documents and it stands concluded on the basis of the judgment of the Supreme Court in the case of Mehta Ravindrarai Ajitrai v. State of Gujarat, reported in AIR 1989 SC 2051 that unless conversant and competent witness is examined to prove the sale instances, such sale deeds cannot be taken into consideration. As against it, the claimants had examined the concerned witnesses in support of the sale instances through the sale deeds relied upon by them. On the basis of these documents it is clear that the lands were sold at the rate of Rs.150/- to Rs.488/- per sq.mt. with reference to Exhs.35 to Exh.40 during the period 1988 to 1990. It is also clear from the evidence that the agricultural lands of other farmers was acquired for this very Scheme and the compensation was granted at the rate of Rs.50/- per sq.mt. in respect of agricultural lands and Rs.150/- per sq.mt. in respect of non agricultural lands. The only argument, which has been raised against it is that this land in respect of which compensation was granted at the rate of Rs.50/- and Rs.150/- per sq.mt. is situated in a developed area whereas the land under acquisition in this case is outside the municipal limits and it is on account of the difference of important location that this example could not be made use of by the claimants in their favour. Once it has come on the evidence that the land acquired in the instant case is situated only at a distance of about one and half to two Kms., the fact of such a short distance would not render the two lands to be wholly uncomparable. The Reference Court has dealt with this question in detail and has observed that these lands are also situated within the radius of Amreli city and

further that the prices, which are increasing from 1988-89 onwards, have also to be taken into consideration at the time of deciding the rate/price. Notification in respect of the lands acquired was made under S.4 in the year 1990, there is large scale increase (in percentage wise) of prices of land day by day, there are possibilities of the development of Amreli city and simply because the National Highway is not passing through from or no direct rail facilities are there, it cannot be said that no development is likely to take place. The Reference Court has also observed that three times difference has been kept between the price of the agricultural and non agricultural land per sq.mt. In some of the cases, in which the compensation for agricultural land has been granted at the rate of Rs.50/per sq.mt. and Rs.150/- per sq.mt. for non agricultural land, are of the year 1988 whereas in this case the Notification under S.4 was issued in 1990 and even the Departmental witness No.2 i.e. Kaushik Maganlal, Deputy Colector, Exh.101 has admitted in his cross-examination that the documents of sale instances are of dates earlier than the date of the issue of the Notification under S.4 in this case. We find that the Reference Court had on analysis of the evidence as a whole and also noticing that the approved Government Valuer, who was examined as a witness, had found that the agricultural land in question was worth Rs.100/- per sq.mt. and for the land on the other bank of the river the compensation had been paid at the rate of Rs.50/per sq.mt., has fixed the rate at Rs.75/- per sq.m.t in these cases and on the basis of the consideration of the evidence in its entirety, it cannot be said that the rate fixed by the Reference Court is unjustifiable or excessive and, therefore, in the opinion of this Court, the order passed by the Reference Court does not warrant any interference.

3. First Appeals Nos.5289/96 and 5290/96 (2 in all) relating to village Pratap Pura (Amreli Rural) are directed against the order passed by the Reference Court in main Land Reference Case No.1/94 with Land Reference Case No.2/94 (2 in all) on 12.8.96. In these cases, the Notification under S.4 was issued on 20.1.90 followed by the Notification under S.6 dated 11.6.91. The Land Acquisition Officer passed the Award on 23.7.93 awarding compensation at the rate of Rs.3.50 Ps. per sq.mt. The claimants felt aggrieved and presented the cases under S.18 for land reference claiming compensation at the rate of Rs.100/- per sq.mt. with other statutory benefits. The Reference Court passed the common order deciding both the References on 12.8.96 holding that the claimants were

entitled to the compensation at the rate of Rs.75/- per sq.mt.

3.1 In these Appeals the Reference Court's order has been challenged on the ground that the order should not have been passed on the basis of Exh.20 following the judgment reported in 1995(1) G.L.R.1 (State of Gujarat v. Gobar Rupa) and that the Reference Court ought to have considered the facts and the evidence of the land related to Exh.20 and that the two lands are different.

3.2 We find that in this case, no oral evidence has been adduced on behalf of any of the sides. The reliance was placed on documentary evidence only i.e. the previous Award Exh.20 in Land Reference Cases Nos.163/93 to 183/93 dated 6.5.95 and Exh.24 which consist of Village Form Nos.VII-XII and the Valuation Report of concerned sale transaction. Besides this, the claimants have presented a Purshish Exh.21 praying that they have no objection if they are also paid the compensation at the rate of Rs.75/- per sq.mt. as was awarded in the Land Reference Case Nos.163/93 to 183/93. The reference Court has noted that the opponents had nothing to say about this Purshish.

3.3 The Reference Court has thus decided this matter on the basis of the previous award, which could be considered as per the observations made in a decision of this Court reported in 1995(1) G.L.R. 1 (State of Gujarat v. Gobar Rupa) (Supra). The Reference Court has found that in the previous Award Exh.20 the lands of the claimants was acquired for the same project i.e. "Thebi Irrigation Project" by the same acquiring authority and the Notification under S.4 was issued on 15.3.90. In this case also, the lands of the claimants was acquired for the same Project and acquiring body is also the same. The Notification under S.4 of the Act was issued on 30.1.90 i.e. the same year. The purpose of acquiring is also the same. The only difference is that the claimants of Exh.20 were residents of Amreli town and the claimants in the present case are the residents of village Pratap Pura. It is not in dispute that the lands which were the subject matter of acquisition in Exh.20 were at the boundaries of Amreli town and the boundaries of the land, which was acquired in the present case, which are of Pratap Pura, are adjoining. If the boundaries of the set of two lands were adjoining, merely because the lands in Exh.20 were of Amreli and the lands in the present case were of Pratap Pura would not make any difference and, therefore, the Reference Court has not committed any

illegality in granting the compensation at the rate of Rs.75/- per sq.mt. in the instant case. There is no basis for the argument raised on behalf of the appellants that reliance could not be placed on Exh.20 and the decision in the case of State of Gujarat V. Gobar Rupa) (Supra) should not have been followed or to say that the two lands were different, more particularly when the appellants did not say anything against the Purshish Exh.21 submitted by the claimants. The Reference Court has rightly determined the price at the rate of Rs.75/per sq.mt. and the impugned order does not warrant any interference.

4. The First Appeals Nos.410/98 to 417/98 (8 in all) relating to Amreli are directed against the Reference Court's order dt.22.9.97 passed in Reference Cases Nos.6/96 to 13/96 (8 in all). In these cases the Notification under S.4 was published in daily news paper on 21.2.90. The same was notified in the Gazette on 15.3.90, which was also affixed at concerned places on 1.8.90 followed by Notification under S.6 published on 18.6.91. The Land Acquisition Officer's Award was published on 23.7.93 awarding compensation at the rate of Rs.50/- per sq.mt. for agricultural lands and Rs.150/per sq.mt. for non agricultural lands. The claimants presented the cases for Reference under S.18 claiming the compensation at the rate of Rs.500/- per sq.mt. for agricultural lands and Rs.600/- to Rs.750/- for non agricultural lands and the lands for commercial purposes. The Reference Court by its common order dt.22.9.97 fixed the market value of the agricultural lands at the rate of Rs.160/- per sq.mt. and Rs.240/- per sq.mt. for non agricultural lands and it has also held that the claimants in Land Reference Case No.7/96 were entitled to compensation for 21 Godowns as per annual rental income as also for the remaining open land with other statutory benefits.

4.1 In these Appeals the impugned order dt.22.9.97 passed by the Reference Court has been challenged on the grounds that the Reference Court has misread the evidence of the claimants as well as the documents, particularly the sale instances relied upon by the claimants, the Reference Court has failed to appreciate the deposition of the Departmental witnesses and the documents produced by the witnesses, the document Exh.58, which was registered after the date of Notification under S.4, has been relied upon for enhancing the amount of compensation, the deposition of Navnitbhai - P.W.6, who is a land broker, has been relied upon even though he had

stated that the agreement to sell the land may be prior to six months of the original sale deed while the actual purchaser has not stated about any agreement to sell prior to the execution of the sale deed, that the land in case of sale instance Exh.58 was far away from the land under acquisition in these cases and hence it could not be relied upon; the Reference Court had failed to appreciate that in respect of sale instances Exh.60 and Exh.61 neither the seller nor the purchaser was examined and only broker had produced the sale deed and, therefore, these documents Exh.60 and Ex.61 could not have been exhibited, the Reference Court has wrongly discarded the evidence of Deputy Collector and the Land Acquisition Officer on the ground that he had not given any evidence in his deposition, that the Reference Court has relied upon the sale instances for the years 1985 to 1989 but has not considered the sale instances of the year 1990 i.e. the year in which the Notification under S.4 was issued for the purpose of acquiring the land, which was the subject matter of Reference.

4.2 There is no dispute that all the claimants are residing at Amreli and their lands are adjoining to villages of Giriya, Bakshipura and limits of Amreli town on Amreli-Rajkot Highway i.e. known as Chital Road. In Para 11 of the impugned order, the learned Asst. Judge, Amreli has mentioned that the witness Mahendrakumar Nathalal Adatiya - P.W.1 had been examined twice at Exhs.20 and 31 and, therefore, his deposition has been considered as a whole as the Holder of Power of Attorney of claimants Shantaben Shambhubhai and Mansukhbhai Shambhubhai in Land Reference Case No.6/96 and also Power of Attorney Holder of claimant Nathabhai Polabhai Adatiya in Land Reference Case No.7/96. According to this witness Amreli is a posh city with facilities of Civil Hospital, S.T.Depot., Aerodrome, Dispensary and Colleges and there is possibility of further developments. It has a big market yard and the lands are situated on the eastern bank of the river, which is a fast developing area. The land includes certain Survey Numbers of village Giriya and Bakshipura as also the western bank of Thebi river. On Amreli-Chital Highway, on which this land is situated, there is an Aerodrome near the acquired land, Pavilion, Eye Hospital and certain residential Societies as also a School and private Hospitals. Further: Doctors, Advocates and Officers also reside in this area and there is a Show room of Bajaj Super on the said road. Opposite to the acquired land, there are commercial Centres and S.No.43/5 in which there is one of the two Commercial Centres, converted for non agricultural purposes in 1983-84 and the compensation in

respect of this land is claimed as non agricultural land. It has also been stated that the land is situated immediately after the Octroi Naka of Municipality and there are godowns around the acquired land and the price of the land has increased to its double with the re-inaguration of Aerodrome. According to this witness, the compensation granted by the Land Acquisition Officer at the rate of Rs.50/- per sq.mt. for agricultural land and Rs.150/- per sq.mt. for non agricultural land and Pucca commercial construction and building etc.is too less and should have been granted at the rate of Rs.600/to Rs.1200/- per sq.mt. In cross-examination he has denied the suggestions made to him that the lands on both the sides of the river is hilly, stony and waste and that it was unfit for agricultural purposes, that Amreli is undeveloped area and godowns, schools, Show Rooms, etc. are far away from the acquired land. He has also stated that there are 21 godowns on that land, the rent of small size godowns is Rs.350/- per month and that of big size godowns is Rs.550/- per month. According to him there are 6 big godowns and 15 small godown just after the Octroi Naka. Besides these godowns, there are other godowns owned by many persons as constructed in 1984. According to him the situation of the godowns outside the Municipal limits and the Octroi Naka is the reason for higher rent because the same are not liable to octroi. The Ledger Accounts Exh.38 was produced to show the income and it has been stated that this income has also been shown in the Income-tax returns as per Exh.39. A Map has also been produced to show the situation of other Survey Numbers adjacent to the acquired land. He has also denied that the land of Land Reference Case No.7/96 is Jirayat land with the explanation that as per his say it is non agricultural land and that before 1984 it was Jirayat land. This witness has in fact deposed on behalf of the claimants. The next witness P.W.No.3 Harshadray Nathalal Chandrana (Exh.52) has hired godowns on rental basis known as Jalaram Complex and that the Godowns are owned by Chakabhai Gopalbhai. He has also stated that there are 21 godowns. He says that he has been paying rent of Rs.700/- per month for two godowns and other godowns of the Chakabhai Gopalbhai had also been let out. According to this witness also the lands are situated outside the Municipal Octroi Naka.

4.3 The next witness P.W.4 Pareshbhai Dinkarrai Davda is examined at Exh.55. He is one of the tenants of the godowns situated in Jalaram Complex and he has also deposed on the same lines as was deposed by P.W.No.3. In support of the claim of prevailing market value, the claimants have examined P.W.No.5 Bharatbhai Kantilal at

Exh.57. This witness also purchased two open plots from Dr. Binaben Shah. The xerox copy of the sale deed had been produced at Exh.58. He had also received a notice from the Government under S.32A after the said purchase. In cross-examination he has stated that he had not seen the sale deeds of lands around his plot. The document Exh.58 shows that Plot of S.Nos.34 and 40/9 were purchased by him for a consideration of Rs.1,20,000/while the land is admeasuring 246 sq.mts. The document was registered on 20.9.90. As per this document, Amreli Chital road is on the east side. As per the document, the witness appeared to have purchased the land at the rate of Rs.490/- per sq.mt. P.W.No.6 Navnitbhai Kakubhai at Exh.59 has been examined as a broker in support of the transactions and according to him the parties must have fixed the rate 5 to 6 months prior to September 1990. The transaction through the document Exh.60 and 61 took place on 16.1.91. In cross-examination this witness has stated that besides the plots, as per Exh.60 and 61, he has six other plots and he had sold out all the plots, which were in the vicinity. As per this witness, market value of the land around the acquired land at the relevant time was prevailing at Rs.400/- to Rs.500/- per sq.mt. Thus the say of this witness is based on the sale instances Exhs.58, 60 and 61.

4.4 It was also the case of the claimants that there was a pucca construction as well as godowns in S.No.43/5 and to prove its value witness Jivanbhai Pragjibhai Savaliya - P.W.7 has been examined, who is a consulting qualified Engineer, and approved valuer for Co-operative Institutions, he is a registered valuer for Income-tax under the provisions of Income-tax Act and Wealth Tax Act and he is also a registered valuer for L.I.C. and G.S.F.C. He has assessed the value as per the procedure laid down by the Government and gave the Report Exh.63 in the prescribed form. In cross-examination he has stated that he was working as such for last 17 years. In the cross-examination there is no challenge to his Assessment Report Exh.63 and the Map Exh.64 produced by him. According to this witness P.W.No.7 the cost of land of S.No.36 was Rs.150/- in the year 1988 and in the year 1990 the rate was Rs.485/- i.e. an increase by 300 per cent in two years because of the fast development of the area.

4.5 On behalf of the Department P.W.No. Kaushikbhai Maganlal was examined at Exh.78.He is the Deputy Collector and Land Acquisition Officer. In cross-examination he has admitted that he had divided the acquired land into two divisions i.e. east side of the

river and west side of the river and that the land on the eastern side of the river is non agricultural land. He has also admitted that there were so many Housing Societies around the acquired land and further that the land of S.Nos.43/1 to 43/5 is touching the road and that the land of S.No.44 is also situated on the opposite side touching the road and that the site of Aerodrome is adjacent to the land of S.No.44. Land of S.Nos.43/2, 43/4 and 43/5 is non agricultural land according to this witness and the land of S.No.40/4 is situated on the interior of the road for which the compensation has been granted at the rate of Rs.150/- per sq.mt. and Rs.50/per sq.mt. for the land bearing S.No.44. The lands of S.Nos.37 and 39 are situated in between the land of S.Nos.43/5 and 36 and lands of S.Nos.37, 39, 43/5, 43/4 and 43/3 are situated between the land bearing S.Nos.36 and 43/2. He has also admitted that the lands of S.Nos.34 and 36 are situated touching each other and the same are very near to the road. This witness has admitted the facts, which were otherwise on record. The second witness on behalf of the Department has been examined vide Exh.80 for the purpose of sale instances. He has stated that his land is far from the bank of river Thebi and he had sold out his land admeasuring 5 Bighas for a consideration of Rs.10000/- in 1985. The copy of the sale deed Exh.83 had been produced. Since it is of 1985 it cannot be of much help for the purpose of the present case because the agreement to sell must have taken place even prior to 1985. This witness has also admitted that he had executed the sale deed on deficit stamp paper and for that Collector, Amreli had issued a notice to him and a fine was imposed. He has also given out that the sale deed produced at Exh.85 was executed on 26.10.88 i.e. prior to the date of the Notification under S.4 in the present case. The next Departmental witness Nandlal Trikamjibhai examined vide Exh.84 has produced the copy of the sale deed Exh.85. He had admitted that the price of the land was fixed prior to the execution of the sale deed which was executed on 26.10.88 i.e. the date prior to the issue of the Notification under S.4 pertaining to this case. He has also stated that there was a proposal for the purchase of this very land after six months at the rate of Rs.500/per sq.mt. It has been found that the land purchased by him at Exh.85 is not touching the Chital road and it was an internal portion, it was a sloppy area and the prevailing market value was Rs.200/to Rs.250/- per sq.mt. Thus all the aspects to consider these sale instances do not support the case of the Department.

4.6 While certain documents were admitted by both the

sides without examining the witnesses, such documents being at Exh.67 - objections filed by the claimants, documents Exh.68 to 71 are the certified copies of Village Forms produced by the claimants.

4.7 On the basis of the analysis of the evidence, which is found on the record in these cases, it is clear that the reference Court has rightly found that the land Acquistion Officer did not consider the market value prevailing at the relevant time on the basis of the sale instances of lands adjacent to the acquired land on the basis of which market value should have been determined. The same could not be ignored altogether even if such sale instances were post acquisition sales. At the most, some deduction could be made from the price indicated in the sale deeds. There is no doubt that the acquired land is adjacent to the lands of sale instances Exhs.58, 60 and 61 and the land around the acquired land is fast developing. The Land Acquisition Officer himself had admitted in Exh.78 in the cross-examination that there are certain Societies around the area and Exh.58 could not be ignored and totally discarded merely because it as executed after the publication of the Notification under S.4. The real market value means the price that a willing purchaser would pay to a willing seller for a property with due regard to its existing conditions, that of its existing advantages and its potential. Thus, the sale instances pertaining to nearby land and in close proximity with the time of Notification under S.4 with regard to the land under acquisition is a relevant consideration for arriving at the market value. Similarly, instances of sale comparable in time and quality in respect of the lands in the nearby locality or area having the same and similar advantages or disadvantages as the lands under acquisition is also a relevant consideration. However, some deduction had to be made taking note of the fact- such as rise in price of the land after acquisition. In the facts of the present case, the only difference between the land under sale instances and the land under acquisition is that the lands of the sale instances was within the municipal limit and the lands under acquisition was just outside the municipal limits. Taking note of this difference in location of the land and the factor relating to the rise of prices, the learned Reference Court has applied 50% cut off and has found that for the acquired land it could be fixed at Rs.240/- instead of Rs.485/- per sq.mt. and on that basis he has fixed the rate in respect of the agricultural land to be Rs.160/per sq.mt. i.e. 2/3rd of Rs.240/- fixed for non agricultural land. This court finds that the Reference Court has applied the tests

which have been laid down in this regard by the Supreme Court and, therefore, the conclusion on this aspect of the matter of fixing the rate of Rs.240/- per sq.mt. for non agricultural land and Rs.160/- per sq.mt. for agricultural land does not warrant any interference.

4.8 So far as the 21 godowns are concerned, the rent at the rate of Rs.350/- per month for small godowns and Rs.550/- for big size godowns and the fact that there were 6 big godwons and 15 small godowns, there is no scope of any controversy because income corresponding to these rates have been shown in the income tax return and the documentary evidence in support of this has been placed on record and even as per the income tax assessment order the rental income of 21 godowns is Rs.1,04,731/- per year. The Claimants were therefore entitled to compensation for the loss of annual rental income. In (1990)1 SCC 59 (Hindustan Oil Mills Ltd., v. Spl.Dy. Collector) the Supreme Court had held that 25 years multiplier would be justified. In the facts of the present case the Reference Court has applied the multiplier of 20 years. It is no doubt true that in the case of Hindustan Oil Mills Ltd. v. Spl.Dy. Collector (Supra) while enhancing the amount of compensation in respect of the acquired land on the ground that prices are continuously rising, the Court while considering the question of compensation in respect of the lands with godowns covering 2000 sq.yards fetching monthly rent of Rs.1000/- the multiplier of 25 years for assessing the market value of godown as ordered by the High Court was held to be justified. It was noticed by the Supreme Court in this case that lessor was to carry out the repair to the godown and it was a case covering 2000 sq.Yds. fetching a monthly rent of Rs.1000/-. The net annual rent of the godown was fixed at Rs.10000/instead of Rs.12000/- and the multiplier of 25 years was applied. However, in the instant case the annual rental income comes out to be more than Rs.1 lac and it has to be remembered that it is only a case of compensation to be paid in lieu of the acquisition and the multiplier of 25 years in such cases would go to the extent of outright price. A distinction has to be made between the market price, which can be fetched in case the property is sold out and the cases in which the compensation has to be paid in lieu of acquisition. No such condition in the present case has been brought on record as was obtaining in the case before the Supreme Court and the Supreme Court has not laid down it as a rule of universal application that in every case the multiplier of 25 years or so should be applied. Subsequent to the aforesaid decision in the case of Hindustan Oil Mills Ltd.

(Supra), in the case of the State of Gujarat V. Rama Rana, reported in JT 1997(1) SC 444 the Supreme Court while accepting the evidence about the value of produce of the crop the multiplier of 10 years has been applied that too after deducting 50% towards cultivation expenses while estimate of the crop for Rs.2050/- was upheld. Thus, even in the case of income out of agricultural produce for the purpose of awarding compensation in the aforesaid subsequent decision of the Supreme Court it has upheld the multiplier of 10 years and that too after deducting 50% towards cultivation expenses. In this view of the matter, this Court finds that the application of multiplier of 20 years for the rental income of godowns is on a higher side i.e. just double, which was not at all called for in the facts of this case and even otherwise there is no plausible explanation for applying the multiplier of 20 years. In such cases, if there is no contemporaneous evidence for determining the annual rental income of the property, the compensation cannot be granted as if the property in question was being purchased from the open market. If the multiplier of 25 years or 20 years for that purpose is applied as a rule of universal application, in many cases the amount of compensation may even exceed the entire price of that property. This court, therefore, does not find that the application of 20 years multiplier was necessary or justified in this case. When the Supreme Court itself has been lately applying the multiplier of 10 years even in the cases of the value of the crops, it would have been sufficient to meet the ends of justice had the multiplier of only 10 years been applied as has been done by the Supreme Court in the case of State of Gujarat v. Rama Rana (Supra). In this view of the matter, so far as the compensation for the loss of the rental income of godowns is concerned the multiplier should be 10 years only and to this extent the order passed by the Referecne Court needs to be modified.

4.9 Thus in each of the concerned References, the compensation is to be paid as under:-

(i) In respect of agricultural land Rs.160/- per sq.mt.

(ii) In respect of non agricultural land Rs.240/- per sq.mt.

(iii) In respect of Land Reference Case No.7/96 for 21 godowns, the compensation shall be payable by taking the annual rental income to be Rs.1,04,700/- multiplied by 10 instead of 20.

It is clarified that out of 4250 sq.mts. of land in this Land Reference Case No.7/96, 2972 sq.mts. of the land is

agricultural land and 1278 sq.mts. is non agricultural land on which the godowns have been constructed. Therefore, the claimants have to be paid the compensation at the rate of Rs.160/- per sq.mt. in respect of the agricultural land of 2972 sq.mts. and at the rate of Rs.240/- per sq.mt. in respect of the non agricultural land of 1278 sq.mts. on which the godowns have been constructed. The order passed by the learned Reference Court that even for agricultural land the claimants are entitled for compensation at the rate of Rs.240/- per sq.mt. cannot be sustained.

5. First Appeals Nos.2073/98 to 2078/98 (6 in all) relating to Amreli are directed against the common Judgment and order dt.24.12.97 passed by the Reference Court in main Land Reference Case No.182/93 with other Land Reference Cases Nos.3/94 and 111/94 to 114/94 (6 in all). In these cases, the Notification under S.4 was published in the daily news paper on 2.2.90, the same was notified in the Gazette on 15.3.90, it was affixed at the concerned places on 1.8.90 followed by Notification under S.6 which was published in the daily news paper on 18.6.91 and was notified in the Gazette on 11.7.91 and affixed at the concerned places on 25.7.91. The Special Land Acquisition Officer published the Award on 23.7.93 awarding compensation at the rate of Rs.50/- per sq.mt. for agricultural land and Rs.150/- per sq.mt. for non agricultural land. The claimants being aggrieved preferred the claim Cases under S.18 claiming Rs.500/per sq.mt. for the agricultural land and Rs.600/- for non agricultural land. All these Reference Cases were decided by a common order dt.24.12.97 holding that the claimants were entitled to compensation at the rate of Rs.160/- per sq.mt. for agricultural land and Rs.240/per sq.mt. for non agricultural land alongwith other benefits as recorded in the order.

5.1 In these Appeals, the order of the learned Reference Court has been challenged on the ground that the evidence has not been properly appreciated, the award passed in Reference Case Nos.6/96 to 13/96 has been wrongly relied upon and the previous Award Exh.39 has been wrongly relied upon.

5.2 The land in question is situated near the sim as well as adjoining the land of Amreli town on the Amreli Rajkot Highway known as Chital road.

5.3 In this case, the claimants have adduced oral as well as documentary evidence. Paresh Dinkarray Davda at Exh.12 has given out the location of the land, which is

quite similar to the one as has been described while dealing with First Appeals Nos.410/98 to 417/98 arising out of the Land Reference Case Nos.6/96 to 13/96. This witness has given out that S.No.43/5-A-1 was converted as a land for non agricultural purposes. It has also been stated that the land bearing S.No.39 is just adjacent to the land bearing S.No.43/5-A-1 and the land of S.No.39 is new tenure land and it was converted for non agricultural purposes. The allegation of land being hilly, stony and waste land has been denied and it has also been denied that the land was not fit for agricultural purposes. The allegation that there was no commercial complex or industries except a lime stone factory surrounding the acquired land had also been denied. P.W.No.2 Mukeshbhai Kalubhai vide Exh.14 has stated that in the acquired land he has constructed a house and at the relevant time, he was residing in his house, the acquired land was in the joint names of his family members and all were applicants in Claim Petition, that in the year 1990 approximate cost of his house was Rs.12,00,000/-, that there are agricultural lands surrounding the acquired land. P.W.No.3 Mukesh Kalubhai Korat, the holder of Power of Attorney of Dhirubhai Manjibhai, etc. has also deposed on the same lines as P.W.No.2 Mukeshbhai Kalubhai. He has produced the xerox copy of the judgment and award passed by the Reference Court in the Land Reference Cases Nos.6/96 to 13/96 as Exh.39 and reliance has been placed on the previous Award. The Reference Court has noticed that the claimants had submitted that they were willing to accept the amount as was awarded to the claimants in Land Reference Cases Nos.6/96 to 13/96. On behalf of the Department, Village Form Nos.VII-XII, copy of village Form No.VIII-A and copy of Village Form No.II at Exh.27, xerox copy of para 104 at Exh.28, copy of the statement showing the figures of 5 years crop of sale at Exh.29, xerox copy of Valuation Report at Exh.30, xerox copy of Award dated 23.7.93 at Exh.31, Map showing the acquisition of land at Exh.32, have been produced. However, no witness has been examined and a Purshish at Exh.40 was given stating that documentary evidence as well as oral evidence produced in Land Reference Cases Nos.6/96 to 13/96 may also be considered in this group and no further evidence was required to be produced in these claim cases as the claimants were relying upon the previous award passed in the main Land Reference Case No.6/96. The very fact that the Department itself rest contended only by filing certain documents without examining any witness and further that Purshish Exh.40 was given by the Department itself that the documentary as well as oral evidence produced in Land Reference Cases Nos.6/96 to 13.96 may be considered in this group also

and no further evidence was required to be produced in these claim cases because the claimants were relying upon the previous award, goes to show that the grievances, which have been raised by the appellant with regard to the appreciation of evidence and that the previous Award had been wrongly relied upon, are misconceived. The Reference Court has rightly applied the principles laid down in the decision reported in 1995(1) G.L.R. 1 (Supra). There cannot be any dispute that the previous award can be relied upon and the same has been rightly relied upon by the Reference Court and this group of matters was to be decided on the same lines and the reasoning on which Land Reference Cases Nos.6/96 to 13/96 were decided and in the opinion of this court, the reasoning given while considering the First Appeals Nos.410/98 to 417/98, as above, is fully applicable to this group of matters for the purpose of fixing the rate of compensation at the ate of Rs.160/per sq.mt. for agricultural land and Rs.240/per sq.mt. for non agricultural land because it is found that the location of the land in question in this group of matters is exactly identical to the lands which were concerned in the previous Award Exh.39, the order passed in Land Reference Cases Nos.6/96 to 13/96. The land under acquisition in this group of matters is clearly comparable with the land, which was the subject matter of acquisition in Land Reference Case Nos.6/96 to 13/96, out of which the First Appeals Nos.410/98 to 417/98 have arisen. The purpose of acquisition, the acquiring body as also the date of the Notification under S.4 are also same i.e. 15.3.90 in both the cases. This group of First Appeals is, therefore, also decided on the same lines and reasoning as given while considering First Appeals Nos.410/98 to 417/98 and the claimants are held to be entitled to get the compensation at the rate of Rs.160/- per sq.mt. for agricultural land and Rs.240/per sq.mt. for non agricultural land.

6. First Appeal No.1166/97 (1 in Number) relating to lands situated at Chittal Road, Amreli is directed against the Reference Court's order dt.18.10.96 passed in Land Reference Case No.9/93. In this case the Notification under S.4 was issued on 20.9.90 followed by the Notification under S.6 issued on 7.3.91. The Land Acquisition Officer passed the Award on 31.3.93 awarding compensation at the rate of Rs.3/- per sq.mt. The claimants being dissatisfied presented the case for Reference under S.18 claiming compensation at the rate of Rs.200/- per sq.mt. The Reference Court by its order dt.18.10.96, as aforesaid, has held that the claimants were entitled for compensation at the rate of Rs.75/- per

sq.mt.

6.1 In this case, one Kapilaben Indukumar Bhatt was examined at Exh.20 on behalf of the claimants. The Department did not examine any witness and only documentary evidence has been produced. Said Kapilaben Bhatt has stated that the lands of the claimants are situated at Chittal Road at Amreli. In the form of documentary evidence, the claimants have produced Exhs.19 to 31 including some sale transactions and copy of the previous award. The reference Court has rightly refused to rely upon the sale instances as no competent witness was examined to prove these sale instances. The reference Court has also found that the claimants had also failed to adduce any evidence relating to crop potential and, therefore, that too was not considered. However, relying upon the previous award (certified copy at Exh.85) and the purshis at Exh.84 submitted by the claimants, the reference Court has found that the lands of the present claimants are situated at Chittal Road, Amreli. Thus, comparing the location of the lands of the claimants concerned in this case with the land, which was the subject matter of the previous award and considering the fact that the lands of the claimants in the present case has also been acquired for the same project and by the same acquiring body, the claimants were also entitled to be paid compensation at the same rate, i.e. Rs.75/per sq.mtr. In paragraph 8 of the reference Court's order, it has been noticed that learned DGP Shri Trivedi had also submitted that the claimants were not entitled for more than Rs.75/- as was awarded to the claimants in the previous award. In this view of the matter, the order passed by the reference Court holding that the claimants in this case were entitled to be paid compensation at the rate of Rs.75/per sq.mtr. does not warrant any interference and we do not find any basis on which the decision arrived at by the reference Court in this case can be said to be unlawful or unjust on any of the grounds on the basis of which the same has been assailed before this Court.

7. First Appeals Nos.269/97 to 275/97 (7 in all) relating to the lands in village Bakshipur are directed against the Reference Court's order dt.14.10.96 passed in main Land Reference Case No.4/94 with Land Reference Case Nos.5/94 to 10/94 (7 in all). In these cases, the Notification under S.4 was issued on 15.3.90 followed by Notification under S.6 dt.22.11.90 and the Land Acquisition Officer passed the Award on 6.2.93 awarding compensation at the rate of Rs.2.50 Ps. per sq.mt. for Jirayat land and at the rate of Rs.3.50 per sq.mt. for

Bagayat land. The claimants felt aggrieved and presented the cases for Reference under S.18 claiming compensation at the rate of Rs.200/- per sq.mt. The Reference Court has held the claimants to be entitled to compensation at the rate of Rs.75/- per sq.mt. with other benefits.

7.1 In these matters while the claimants have produced oral as well as documentary evidence, it was deposed that the lands of claimants of Reference Cases Nos.36 of 1993 to 80 of 1993 were adjoining lands and, therefore, the claimants of the aforesaid Reference Cases Nos.36 of 1993 to 80 of 1993 were also residing at village Baxipur and in their cases, compensation at the rate of Rs.75/- per sq.mtr. was awarded. The claimants in these cases stated that they were also willing to accept the same amount as their lands are also of village Baxipur acquired for the same purpose, i.e. Thebi Irrigation Project. On behalf of the Department, documents including certain sale instances were produced, but the same were not proved as no competent witness was examined to prove the same. The reference Court after considering the cases which were cited in this regard, held that such documents cannot be looked into and the mere production of the documents is not sufficient. The reference Court has found that the case of the present claimants was comparable with the cases of the claimants concerned in the previous award, Exh.23, in which case, the compensation was awarded at the rate of Rs.75/- per sq.mtr. It was correctly found that the cases of the present claimants were identical to the cases of the claimants who were concerned in the earlier Land Reference Cases, the main being Land Reference Case No.36 of 1993 and accordingly the reference Court has held that the claimants were entitled to compensation at the rate of Rs.75/- per sq.mtr. The factual position as was obtaining in Exh.23, i.e. the previous award and the one in the present case being similar was not in contest and, therefore, the reference Court could not have taken a different view on the basis of any document which was produced but was not proved and the reliance was rightly placed on the previous award in the instant case and, therefore, the decision arrived at by the reference Court while deciding these cases does not warrant any interference.

7.2 In one of these First Appeals i.e. First Appeal No.272/97 after the arguments were heard and order was rserved in October 1998, a note dt.5.11.98 was moved by Mr. Kanabar appearing for Shantaben Motiram and Samjuben Motiram saying that they had been arrayed as respondents way back on 24.2.98 by the order of the Court and

although Mr. Kanabar had filed the Power on their behalf in this First Appeal No.272/97, name of Mr. Kanabar was not shown in the Board when the aforesaid group of matters including this First Appeal No.272/97 was listed before the Court. Whereas the fact with regard to the filing of this note dt.5.11.98 was brought to the notice of the Court while the judgment was reserved in this group of matters and by this time as per the Sittings this Bench was not available, this Bench was specially constituted on 10.3.99 to consider this note dt.5.11.98 and on 10.3.99 it was directed that this First Appeal No.272/97 alongwith other group of First Appeals may be listed again for final hearing before this Division Bench on 15.3.99 at 2.45 P.M. and on 15.3.99 the arguments were heard again and the order was reserved.

7.3 It appears that in fact Shantaben Motiram and Samjuben Motiram have moved two Civil Applications Nos.11088/97 and 11090/97. Through Civil Application No.11088/97 it was prayed that they may be arrayed as respondents Nos.2 and 3 and the amount deposited by the State of Gujarat and Executive Engineer, Irrigation Department in the lower Court in pursuance to the order pased by the Hon'ble Court upon Civil Application No.3629/97 may not be paid over to the opponent Kantilal Motiram Ramavat. In other Civil Application No.11090/97, it was prayed that these two applicants be permitted to withdraw the amount to the extent of their respective shares out of the amount deposited by the Stae of Gujarat and the concerned Executive Engineer in the lower Court in pursuance to the order passed by this Court in Civil Application No.3629/97 in this Appeal.Both these Civil Applications Nos.11088/97 and 11090/97 were disposed of by the Court on 24.2.98 (Coram: Y.B.Bhatt and C.K.Buch,JJ) by passing the following order:-

"Heard the ld.counsel for the respective parties.The contention of the third oppoenent herein that the applicants have no right to claim share in the amount of compensation, is kept open. Subject to the above, applicants are permitted to be joined as party-respondent in the First Apeal.

Both the applications are accordingly disposed of with no order as to costs. Rule made absolute to the aforesaid extent in both the applications."

7.4 Thus while allowing these two applicants to be joined as party-respondents in the First Appeal,the question as to whether they had any right to claim share in the amount of compensation was kept open by this

Court. The case of these two respondents, as has been argued by Mr.Kanabar is that Reference Case No.7/94 was filed by Kantilal Motiram Ramavat on his behalf as well as on behalf of the legal heirs of deceased Motiram Parshotam. Both these respondents have claimed to be the legal heirs of deceased Motiram Parshotam and had submitted that Kantilal Motiram Ramavat is brother of these two respondents and there are 5 other heirs of the deceased Motiram Parshotam. It is submited that their interest appears to have been represented by the claimant Kantilal Motiram Ramavat. It has been submitted on behalf of these two respondents by Mr. Kanabar that the right,title and interest of these two respondents in the lower Court was being represented by Kantilal Motiram Ramavat collectively but now when the amount has been deposited in the lower Court under the orders of this Court, he wants to take away the entire amount and does not want to give the same to the applicants to the extent of their respective shares. They had, therefore, filed an application before the lower Court. It has been submitted that the amount of Rs.11,17,393/- is lying with the lower Court. These two respndents have also consented to the withdrawl of the amount to the extent of 6 shares by Kantilal Motiram Ramavat and against that Kantilal Motiram Ramavat had consented to the withdrawal of the amount to the extent of their share. The lower court accordingly passed orders on 20.8.97 on both the applications and whereas Kantilal Motiram Ramavat objected to it thereafter, the amount is not paid by the lower court to either of these two respondents or to Kantilal Motiram Ramavat.

7.5 While Mr. Lakhani apearing on behalf of the claimant Kantilal Motiram Ramavat has submitted that these respondents have no right to claim shares in the amount of compensation and this argument has been kept open while passing the order dt.24.2.98 by the Court, we are of the opinion that essentially it is a First Appeal which has been filed by the State of Gujarat and the Executive Enginer challenging the order passed by the Reference Court with regard to the rate at which the compensation is to be granted. The dispute raised by these two respondents with regard to the claim of their share in the amount of compensation is a dispute inter se between the legal heirs of deceased Motiram Parshotam's sons including Kantilal Motiram Ramavat and Shantaben Motiram and Samjuben Motiram etc. in the nature of apportionment under S.30 of the Land Acquisiton Act. We find that it will be beyond the scope of this Appeal to adjudicate the dispute in fact inter se between the legal heirs of deceased Motiram Parshotam. In this view of the matter, it wil be beyond the scope of the Appeal to

determine the rights of legal representatives of deceased Motiram Parshotam with regard to their shares in the claim of compensation. The fact remains that even as per the proceedings, which have taken place in this matter, Kantilal Motiram Ramavat has acted and is a party as son of deceased Motiram Parshotam and adminsitrator. Therefore,in case the lower Court has pased an order on the application of these two respondents on 20.8.97, as has been stated in para 2 of the Civil Application No.11090/97, and in case that order dt.20.8.97 passed on the application of these respondents have already attained finality, it is open for any of the concerned parties to take steps acordingly with regard to their share in the amount, which has been deposited and even if that matter is open before the lower court on the objection filed by Kantilal Motiram Ramavat, it is for the concerned Court to pass appropriate orders thereon in accordance with law and it will be open for any aggrieved party to take such action in this regard as it deems fit. Beyond these observations, no orders can be passed by this Court on the grievances raised by these two respondents in this Appeal because this Appeal is essentially an Appeal filed by the State of Gujarat challenging the rate at which the compensation has been directed to be granted by the Reference Court.

8. First Appeals Nos.910/96 to 920/96 (11 in all) are directed against the Reference Court's common order dt.29.12.95 passed in main Land Reference Case No.77/93 with other Land Reference Cases Nos.36/93, 50/93, 52/93, 59/93, 60/93, 63/93, 69/93, 72/93, 75/93 and 78/93 (11 in all). In these cases, the Notification under S.4 was issued on 20.1.90 followed by Notification under S.6 issued on 2.2.90. The Land Acquisition Officer passed the Award on 6.2.95 awarding compensation at the rate of Rs.2/- per sq.mt. and Rs.2.50/- per sq.mt. The claimants preferred cases for Reference under S.18 claiming compensation at the rate of Rs.200/- per sq.mt. and the Reference Court by its order dt.29.12.95 has held that the claimants are entitled to be paid the compensation at the rate of Rs.75/- per sq.mt. with other benefits.

8.1 In these matters, on behalf of the claimants one Madhubhai Popatbhai was examined at Exh.71 and Jerambhai Devshibhai was examined at Ex.73 and the claimants had produced list at Exh.18,which mainly consists of Village Forms VII/XII. The claimants have also produced at Exh.68 a previous Award in Land Refernce Case No.171/93 alongwith some documentary evidence at Exh.20.The claimants have also produced a copy of the Banakhat

Exh.75 and a copy of the Government Notification at Exh.82. On behalf of the Department one Bhikhubhai Meghjibhai was examined at Exh.80 and documentary evidence consisting of copy of sale transactions and other documents in its support were also filed.

8.2 The Reference Court has rightly found that no sale transaction was relied upon by the claimants and sale transactions alongwith list Exh.51 filed by the Department could not be relied upon and could not be read in evidence as no competent witness was examined to prove the same. The question of determining the rate at whcih the compensation is to be paid on the basis of crop potentiality has also been rightly rejected by the Reference Court as there was no evidence in this regard. The Reference Court has considered that the witness examined at Exh.73 had stated that the lands of claimants under the previous award and the lands of the present claimants were adjoining and were of the same fertility. This deposition has remained unchallenged. Whitness Bhikhubhai Meghjibhai at Exh.80, who was examined by the Department,has admitted in his cross - examination that the lands of the claimants were just adjoining to the lands of Amreli City S.No.1037 and 1038 as per the Map at Exh.201. It has also been admitted by him that S.No.1278 of village Baxipur are in peripheral area of Amreli city as per the Government Notification Exh.82. He has also stated that the lands of village Baxipur are also fertile. Thus,keeping in view the previous award Exh.68 and the similarity of the lands in question with the lands which were concerned in previous Award Exh.68 and that the lands of the claimants are within the peripheral area of 1 Km. of Amreli City, the present claimants have been held to be entitled for payment of compensation at the rate of Rs.75/- per sq.mt. We find that the previous Award i.e. Exh.68 has been rightly relied upon by the Reference Court and for reasons, which have been given in detail while deciding the earlier groups of maters in these cases, we do not find that it is a case worth any interference and further that the rate of Rs.75/- per sq.mt. is in no way excessive or disproportionate. In the result, the order passed by the Reference Court challenged in these Appeals does not warrant any interference.

9. First Appeals Nos.1017/96 to 1050/96 (34 in all) relating to Bakshipur are directed against the Reference Court's common order dt.28.12.95 passed in main Land Reference Case No.74/93 with other Land Reference Cases Nos.37/93 to 49/93, 51/93, 53/93 to 58/93, 61/93 to 62/93, 64/93 to 68/93, 70/93, 71/93, 73/93, 76/93, 79/93

and 80/93 (34 in all). In these cases, the Notification under S.4 was issued on 20.1.90 followed by Notification under S.6 dt. 2.2.90. The Special Land Acquisition Officer passed the Award on 6.2.93 awarding compensation at the rate of Rs.2/- per sq.mt. and Rs.2.50 per sq.mt. The claimants presented cases for Reference under S.18 claiming compensation at the rate of Rs.200/- per sq.mt. and the Reference Court by its above stated common order dt.28.12.95 has held that the claimants were entitled for compensation at the rate of Rs.75/- per sq.mt. alongwith other benefits.

9.1 In this group of Appeals, we find that the Reference Court while passing the impugned order has also decided the matter on the basis of the previous Award i.e. Exh.28 and the challenge, which has been thrown to the order of the Reference Court in this group of matters,is on the same grounds as in the case of First Appeals Nos.910/96 to 920/96 and the impugned order is also based on consideration of the evidence at Exh.68 and Exh.211 as in the aforesaid group of Appeals i.e. First Appeals Nos.910/96 to 920/96. It has been found that the lands of the claimants are in the peripheral area of 1 Km. of the Amreli City. In this view of the matter,the rate at which the compensation has been granted i.e. Rs.75/- per sq.mt. by the Reference Court cannot be said to be excessive or disproportionate for the same reasons. Reference Court's order,therefore, does not warrant any interference on the parity of the reasons given in the earlier group of matters. In the result, the order passed by the Reference Court, which is challenged in these Appeals, does not warrant any interference.

10. First Appeals Nos.7/97 to 13/97 (7 in all) relating to the lands of Bakshipur are directed against the Reference Court's common order dt.26.7.96 passed in the main Land Reference Case No.190/93 with other Land Reference Cases Nos.191/93 to 196/93 (7 in all). In these cases, the Notification under S.4 was published on 13.7.93 followed by Notification under S.6 dt.8.8.93. The Special Land Acquisition Officer passed the award granting compensation at the rate of Rs.2.20Ps. per sq.mt. for Jirayat land and Rs.2.75 Ps. per sq.mt. for Bagayat land. The claimants presented cases for Reference under S.18 claiming compensation at the rate of Rs.100/- per sq.mt. The Reference Court by the aforesaid common order has held that the claimants are entitled to compensation at the rate of Rs.75/- per sq.mt. alongwith other benefits.

10.1 In this group of matters on behalf of the claimants, one Ravjibhai Harjibhai was examined at Exh.17. The claimants have relied upon the previous award passed in the main Land Reference Case No.171/93, copy of which was produced at Exh.18. The claimants had also filed a Purshish Exh.20 that they were ready and willing to accept the amount, which was awarded to the claimants in the main Land Reference Case No.171/93. On behalf of the Department the documentary evidence alongwith list Exh.22 was filed, which mainly consists of village Forms Nos.VII/XII and some sale transactions but no competent witness was examined to prove the same. The Reference Court has, therefore, placed reliance on the previous Award and has found that the lands of the present claimants were also required for the same THEBI IRRIGATION PROJECT. The date of Notification in the present cases and in the cases of claimants in case of Exh.18 are the same, acquiring body is also the same, the purpose of acquisition of the land is also the same and the Award Exh.18 pertains to the claimants of lands situated in the sim of Amreli town while the present claimants are residing at village Baxipur, which is just adjoining to Amreli town. The Reference Court has observed that it was not disputed that the boundaries of the lands of Amreli town and village Baxipur are adjoining and the lands are also having the same fertility. Previous Award in Land Reference Case No.171/93 i.e. Exh.18 has been rightly relied upon and on that basis in this group of matters also the rate of compensation has been fixed at Rs.75/- per sq.mts., which is in no way excessive or disproportionate and we find that in this group of matters also the order passed by the Reference Court does not warrant any interference for the reasons given while considering the earlier identical group of matters, as aforesaid. In the result, the order passed by the Reference Court, which is challenged in these Appeals, does not warrant any interference.

11. First Appeals Nos.2358/97 and 2359/97 (2 in all) relating to Bakshipur are directed against the common order passed by the Reference Court on 14.3.97 in Land Reference Cases Nos.3/96 and 4/96 (2 in all). In these cases, the Notification under S.4 was issued on 15.3.90 followed by the Notification under S.6 published on 27.7.90. The Land Acquisition Officer passed the Award on 23.7.93 awarding compensation at the rate of Rs.3.50 per sq.mt. and Rs.6/- per sq.mt. The claimants preferred cases for Reference under S.18 of the Act claiming compensation at the rate of Rs.200/- per sq.mt. and the Reference Court by its common order dt.14.3.97, as aforesaid, has held that the claimants are entitled to

compensation at the rate of Rs.75/- per sq.mt. alongwith other benefits.

11.1 The lands of both the claimants in these cases was acquired for the same Project i.e. "THEBI IRRIGATION PROJECT". In these cases no evidence was adduced by either of the parties and the claimants have relied upon the previous award in group matters of L.A.Cases 163/93 to 183/93, a Purshish Exh.11 was also submitted as stated in para 9 of the Reference Court's order dt.14.3.97 and it is this previous award at Exh.10 on the basis of which the Reference Court has passed the order. In the previous Award, which has been relied upon, the compensation was awarded at the rate of Rs.75/- per sq.mt. and the lands concerned in the previous Award Exh.10 were also with regard to the lands of the same village i.e. Baxipura and the same are similarly situated. The order passed by the Reference Court also shows that the learned D.G.P., who appeared before the Reference Court on behalf of the Department, also had nothing to say on this point and, therefore, finding parity with regard to the lands of the claimants in these cases and the lands concerned in the previous Award and keeping in view that the year of Notification under S.4 is also the same in the two cases, the Reference Court has awarded the compensation at the rate of Rs.75/- per sq.mt. to the claimants and we do not find any reason to interfere with the order passed by the Reference Court in these two cases.

12. First Appeal No.2546/97 relating to Bakshipur (1 in Number) is directed against the Reference Court's order dt.14.3.97 passed in Land Reference Case No.5/96 (1 in number). In this case, the Notification under S.4 was issued on 15.2.93 followed by a Notification under S.6 published on 6.5.93. The Land Acquisition Officer passed the Award on 22.6.95 awarding compensation at the rate of Rs.4/- per sq.mt. The claimant presented the case for Reference under S.18 claiming compensation at the rate of Rs.200/- per sq.mt. The Reference Court has found the claimant to be entitled to compensation at the rate of Rs.75/- per sq.mt. alongwith other benefits.

12.1 In this case also no evidence was adduced by either of the parties and the reliance has been placed on the certified copy of the previous award Exh.15. The Reference Court has noticed that the lands of the present claimants and the lands, which were concerned in previous award Exh.15 were acquired for the same public purpose and for the same Project and the previous award Exh.15

was also with regard to the lands of village Baxipura and the present claimants are also having their lands at village Baxipura, the year of Notification under S.4 is also the same and the learned D.G.P. had also nothing to say on this point and, therefore, in order to give even treatment in identical cases, the Reference Court has awarded the compensation at the same rate of Rs.75/- per sq.mt. in the present case as was done while passing the previous Award Exh.15. For the reasons, as aforesaid, we do not find any reason to interfere with the order dt.14.3.97 passed by the Reference Court in this Appeal also.

13. First Appeals Nos.989/98 to 995/98 (7 in all) relate to the claimants' lands adjoining the villages Giriya, Bakshipur and limits of Amreli town and the same are directed against the common judgment and order dt.9.1.98 passed in main Land Reference Case No.1/96 with consolidated Land Reference Cases Nos.1/96 and 82/95 to 87/95 (7 in all) main Land Reference Case being No.1/96. In these cases, the Notification under S.4 was published in the daily news paper on 29.11.92 and 30.11.92, the same was notified in the Gazette on 10.12.92 and was affixed at the concerned places on 14.12.92 followed by Notification under S.6 published on 18.2.93 in the Gazette and in the news paper on 20.2.93 and the same was affixed at the concerned places on 24.2.93. The Special Land Acquisition Officer published the Award on 23.2.95 awarding the compensation at the rate of Rs.12/- pr sq.mt. (Rs.1200/- per Are) for Bagayat land and Rs.8/per sq.mt. (Rs.800/- per Are) for Jirayat land and Rs.50/per sq.mt. for non agricultural land. Being aggrieved from this Award, the claimants preferred Reference cases under S.18 claiming compensation at the rate of Rs.1000/per sq.mt. The Reference Court decided all these cases by its common order dt.9.1.98 awarding compensation at the rate of Rs.400/- per sq.mt. with other benefits.

13.1 In these cases the lands of the claimants are adjoining the villages Giriya, Baxipura and limits of Amreli town. Their lands have also been acquired for the 'THEBI IRRIGATION PROJECT'. On behalf of the claimants 7 witnesses were examined and the Department had examined 3 witnesses. The claimants' witness No.1 Gunvantbhai Vallabhbhai has stated that the land bearing S.No.90/1 is situated on the eastern side of Amreli Rajkot road and land S.No.89 is also on the same direction touching the land of S.No.90/1. According to this witness, land bearing S.No.91 is situated on the western side of the road touching the road side. The lands of S.No.90/1 and 91 are situated on the east and west side of the said

Amreli-Rajkot Highway respectively and land S.No.89 is also on the eastern side touching the land of S.No.91. The Reference Court has mentioned about Map Exh.39 and has noted that on the southern side the land bearing S.No.44 is situated and it is touching the land S.No.91 which is on the western side of the road and land bearing S.No.39 is touching the S.No.43 and on the same direction. The land of S.No.39 is pertaining to 'Surya Garden' Hotel and for which the Collector has ordered to pay a premium of Rs.300/- to convert the said land into non-agricultural purposes. All these three Survey Numbers are in the one line and on the western side of the Highway. According to the Geographical situation on the other side of the road i.e. to say the eastern side of the road, the land bearing S.No.51 is just opposite the land of S.No.39 and on the eastern side the land for Aerodrome is situated in S.No.51 while S.No.44 is touching the boarder of the Aerodrome land S.No.51 going towards northern side of S.No.44. The land of S.No.91 is adjacent to it and at the same time on the western side of S.No.44 is S.No.50 and S.No.49 and the boarder of land of S.No.50 touches the land of S.No.89 to some extent. Thus, the lands of S.No.39 and 51 'Surya Garden" Hotel and lands of Aerodrome are situated respectively on the opposite direction of the road. S.No.43 touches the boarder of the acquired land of S.No.91. On the western side of S.No.43, there are lands of S.Nos.41 and 42 and the land of S.No.38 is touching the southern side of S.No.41. Thus the Geographical situation of all these Survey Numbers show that these lands are around the acquired land. P.W.No.1 Gunvantbhai Vallabhbhai had also deposed the particulars of the same Survey Numbers around the acquired land. He has stated that the award for the land bearing S.No.43 is at the rate of Rs.275/- per sq.mt.. This S.No.43 is touching the boarder of the said Amreli-Rajkot road. This position is also clear from the Map Exh.39 and the land of S.No.40 is on the interior side of the road for which the compensation is awarded at the rate of Rs.70/per sq.mt. According to this witness, some other lands bearing S.Nos.41, 43/5, 40/4, 43/2 and 43/4 were also acquired and for these lands the Land Acquisition officer had also awarded compensation at the rate of Rs.150/- per sq.mt. As per deposition of this witness, the land of S.No.39 is touching the road and just opposite to the land of the Aerodrome, where the "Surya Garden" Hotel is situated and for this land the Town Planning Department had also assessed the value and fixed the price at Rs.217/- vide letter dt.16.10.92. It has also been stated by this witness that the land of S.No.39 is a new tenure land and to convert this land for N.A.purposes the Collector, Amreli had fixed the premium

of Rs.300/- per sq.mt. vide his letter dt.27.11.92, which has been produced at Exh.46. This witness has also stated that even in cases of some other S.No. viz. S.No.56, which is only 300 mts. away from the acquired land, vide Registered Sale Deed No.900 dt.11.5.92, the land was sold out at the rate of Rs.690/- per sq.mt., that lands of S.Nos.34 and 40/9, which are about 200 Kms.away from the land in question and the plot Nos.10, 17, 18, 60 and 6 were also sold out at high price.

13.2 This witness P.W.No.1 has also stated that in his land there were 14 pacca cement constructed buildings and 3 pacca wells, that there were 8 'Gunda' trees of different ages, that there were 2 'Gulmahor' trees, 3 'bamboo' trees, 19 'Neem' trees, 1 yellow small fruit tree', 4 'Khijda' trees and 11 'Babul' trees, that in Land Acquisition Case No.82/95 there were 10 constructed buildings, 3 wells as well as 3 cattle houses, in Land acquisition Case No.83/95 there was stone built compound wall, cement pipe line of 2000 ft. in length, 5 pacca houses, 5 wells, 1 cattle house, 1 machine room, 5 small 'Kundis', 161 mango trees, 73 'Peach' trees, 25 'Pear' tres, 6 'Bamboo' trees, 1 'Almond' tree, 1 'Gulmahor' tree, 8 'Gunda' trees, 1 'Savan' tree, 1 'Pipar' tree, 1 'Soop-nut' tree, 16 'Beat-nut' tres, 25 'Berries' tree, 2 'Neelgiri' tres, 152 'Neem' trees, 13 'Native Babul' trees, 5 'Native Berries' trees; in Land Reference case No.84/95 there were 5 constructed pacca houses, 1 pacca well, 5 cattle houses, 13 small rooms, etc. and that all these facts were brought to the notice of the Land Acquisition Officer at the time of hearing. It has been further stated that he had spent Rs.1,50,000/- for construction and Rs.50,000/- for machine room.

13.3 This witness has also stated that lands of S.Nos.22/2 and 23/1 are of village Giriya and are situated on the southern side of Chital Road which is about one and one and half Kms.away from the acquired land, the present acquired lands of the claimants are far better in comparison to lands of S.Nos.22/2 and 23/1 of village Giriya.

13.4 Regarding development of this area, this witness has stated that 'Surya Garden' Hotel is situated in land of S.No.39 and between the acquired lands of the claimants and 'Surya Garden' Hotel, there are godowns for scooter, Television, Freeze, Bicycles and there are some residential premises also, besides one cement factory between S.No.39 and and 91. All these godowns etc. are situated on the western side of the road. On the eastern side of the road, there are Municipal Pavilion,

Aerodrome, Eye Hospital and Residential houses.

13.5 The next witness P.W.No.2 named Navnitbbhai Kanubhai Ganatra (Exh.47) has stated that he had purchased plot Nos.17 and 18 in Revenue S.No.34 and 40/9 through Registered Sale deed dt.28.7.88 and had paid a total sum of Rs.96,000/- for 739.21 sq.mts. at the rate of Rs.130/- per sq.mt. as per document Exh.48, the distance between these plots and the acquired land is about 400 to 500 ft., that he sold out Plot No.17 admeasuring 138 sq.mts. by Registered Sale Deed on 16.1.91 to one Chunilal Ranchhodbhai Parmar for Rs.55,200/- as per the copy of the Index produced at Exh.29 and has stated that he received the price at the rate of Rs.400/- per sq.mt. He had also sold land admeasuring 143 sq.mts. out of Plot No.17 to one Ashokbhai Nathabhai Parmar through Registered Sale Deed for a consideration of Rs.57,200/- on 16.1.91 vide copy of Index Exh.30 and thus he has sold out the land of Plot No.17 in 2 parts at the price of Rs.400/- per sq.mt.

13.6 P.W.No.3 - Vipul Kanaiyalal Kanabar at Exh.50 has stated that he purchased the lands of Plot No.6 of S.No.34 and 40/9 by Registered Sale Deed dt. 28.12.92, he had paid Rs.2,30,000/- for this plot admeasuring 328 sq.mts. This land was purchased from one Jitendrakumar Hiralal Mehta, who signed Registered Sale Deed in his presence and the document Exh.51 has been produced. It has also been stated by this witness that the land of Plot No.6 of S.No.34 and 40/9 is adjacent to land of P.W.No.1 - Gunvantbhai Vallabhbhai, which is the acquired land in this case. The sale deed shows that it was purchased on 28.12.92 for Rs.699/- per sq.mt.

13.7 P.W.No.4 Usmanbhai Jamalbhai Exh.52 has produced Registered document, which was executed by one Kamlaben and the land was purchased by one Rekhaben Bhikhubhai Madhak. This land admeasuring 57-94-22 sq.mt. was purchased for a consideration of Rs.40,000/- and that Kamlaben had signed in his presence on the document Exh.53. The land concerned in this document bearing part of S.No.56 was sold for Rs.690/- per sq.yd. on 11.5.92.

13.8 P.W.No.5 Mahendrakumar Nathalal Adatiya (Exh.54) had stated that he had purchased Plot No.8 in S.No.36/1 through Registered Sale Deed dt.27.10.88 and this Plot admeasured 592.50 sq.mt. The said Plot was purchased for a consideration of Rs.83,500/- as per document Exh.55 and he has paid Rs.140/- per sq.mt. on 27.10.88. The land S.No.36/1 is just opposite the land of Aerodrome land S.No.51 and this Survey Number is also on the boarder of

the said road. This land was purchased from one Power of Attorney Holder Atulkumar Bhagvandas and Anilkumar Girdharbhai.

13.9 P.W.No.6 Pareshkumar Jayantilal (Exh.56) has stated that he had been doing the business of 'Bond Writer' for last 12 years and he is a scribe of document Exh.57 i.e. document, which was registered pertaining to the land of Amreli City by Revenue S.Nos.34 and 40/9 and through this document the Plot No.10 admeasuring 361 sq.mts. was purchased for Rs.1,50,000/-. The purchaser is one Dr.Rekhaben B.Mehta and seller was Kantilal N.Shah. This document Exh.57 shows that plot No.10 of S.Nos.34 and 40/9 was sold for Rs.415/- per sq.mt. This witness has attested this document at the instance of both the sides. He has also stated that this document Exh.57 was drafted by him and subsequently he got it typed. He had also attested document Exh.58 pertaining to plot No.60 of S.Nos.34 and 40/9 admeasuring 199.69 sq.mt. which was sold out for Rs.85,000/-. This document Exh.58 was executed on 11.10.91. Looking to the sale price of this plot, it appears that it was sold for a consideration of Rs.425/per sq.mt. on 11.10.91. He has also stated that land of S.Nos.34 and 40/9 is on the opposite side of the land of Aerodrome and 'Sarvodaya' society is about 200 to 250 mtrs., away from this land.

13.10 The witness P.W.No.7 - Anilkumar Karshandas Kanakiya (Exh.59) has sold plot No.14 situated in S.No.41. The registered document was executed on 5.1.91. The purchaser is one P.J. Sheladiya. The land admeasuring 130 sq.mts. was sold for Rs.38,000/-. The witness has stated that he had signed the document and produced the certified copy Exh.60, which shows that the Plot No.14 was sold out as part of S.No.41 at the rate of Rs.292/- per sq.mt. on 5.1.91.

13.11 The Department has examined D.W.No.1 - Ikbalhusen Rasulbhai Mansuri (Ex.69) and he is the author of the basic award Exh.38 in the present claim cases. He has stated that he considered the sale instances of about 5 years. He has also stated that he considered 4 documents pertaining to the years 1988-90 and has fixed the price of Rs.8/- per sq.mt. for Jirayat land, Rs.12/per sq.mt. for Bagayat land and Rs.50/- per sq.mt. for non-agricultural land. He has not disputed the dates of Notification under S.4 published in November and December 1992, as also the dates of the Notification under S.6 being in February 1993. While admitting that he was required to prepare the Draft Award as per the provisions of S.11 to be sent to the higher authorities for approval

and that such Draft award was prepared in the present cases also, he has denied the suggestion that in the Draft Award he had suggested Rs.200/- to Rs.250/per sq.mt. as compensation for non agricultural lands but did not produce the copy of the Draft award. After looking into the Map Exh.39 he has admitted that the present S.Nos. are tangential to the Boarder of Amreli Town and S.Nos.89, 90/1 and 91 are nearby the land bearing S.Nos.40, 46 and 50 and further that the lands of S.Nos.40, 46 and 50 had also been acquired for the same 'Thebi Irrigation Project' and has also admitted that the lands of S.No.43 are touching the road and that the lands of S.Nos.90/1 and 90 are also touching the road side and that both the S.Nos. are situated on northern side of the road bearing S.No.43. It appears from the cross-examination of this witness that the claimants had put up their case with regard to the development of the area and also with regard to the existence of the Cement Factory, Industrial Units and the existence of certain Societies in the lands of S.No.43, the existence of Aerodrome, Pavilion, Hospitals of Dr.B.K.Mehta and Dr.Shah and other residential houses etc situated near the acquired land of the claimants, but he has either denied these suggestions or had pleaded ignorance about the same. He has admitted that the lands of S.Nos.90/1 and 91 are likely to be converted into non agricultural land. He has also denied the suggestion with regard to pacca residential houses where pipe line, cattle house, machine room, constructed 'Kundis' etc were there, in the acquired land, though no panchanama in this regard was prepared.

13.12 D.W.No.2 -P.M.Zinzuvadia (Exh.71) has stated that he had purchased the land bearing S.No.89 of village Giriya from one Patel Shambhubhai Vallabhbhai Kabaria on 2.11.88 by registered sale deed. 10 plots from this S.No.89 were purchased for which he paid Rs.18,500/for the land admeasuring 1000 sq.mts. vide Ex.72. He has stated that the lands of S.No.89 is about 4 Kms. away from the residential premises of Amreli town and that the lands,which were purchased by him, were non agricultural lands. He has stated that he had executed the agreement to sell prior to two and two and half years from the date of the sale deed. In the agreement to sell the price of the lands was agreed for Rs.300/- per sq.mt., but he states that in order to pay less stamp duty, less price was shown in the Registered sale deed Exh.72 and that he had not received the original registered document from the Registrar's office and that the Deputy Collector (Stamp Duty) Amreli had issued notice for the recovery of the stamp duty and he had received the copy of the notice

under S.32C of the Stamp Duty Act. The notice was received by him on 31.12.92 and in that notice the Stamp Duty Collector had fixed the price of the land bearing S.No.89 for Rs.1,27,000/- meaning thereby Rs.125/- per sq.mt. In cross-examination he has also stated that he has got land in S.No.43 situated in the sim of Amreli City on the southern side of land of S.No.43, the land in the sim of Amreli were converted into non agricultural land and on the southern side there are residential houses, societies, godowns, show rooms,commercial centres, shops of electric items, Scooter godowns, Cement factory, residential housing societies,namely, Shripark society, Sarvodaya Society, Shrirang Society, Mahila Society, Shriji Society, Sidhdhivinayak society, Sainagar Society,Nijanand Society etc. he has also admitted existence of Aerodrome, Pavilion, Eye Hospital, Dr.Shah Hospital, Nutan High School, Dr.B.K.Mehta Hospital and other residential houses near this land. He has also admitted that going further towards Amreli town, there are godowns, show room of Bajaj Scooter, Jalaram Commercial complex, Meghnath Commercial centre and Surya Garden Hotel etc. He has also admitted that around this land there is most developed and posh area of Amreli city and that the lands of S.Nos.90 and 91 are situated near S.No.43. He has also admitted that land bearing S.No.89 was also acquired for 'Thebi Irrigation Project' and has also admitted that agreement to sale of land bearing S.No.89 of village Giriya was fixed at Rs.300/per sq.mt. prior to 2.11.88, but in the document Exh.72 he has mentioned less price and got the notice for paying less stamp duty and that the Government has fixed the price in this document Exh.72 at Rs.150/- per sq.mt.and this land of Exh.72 is also 4 Kms.away from the residential houses of Amreli City.

13.13 D.W.No.3 - Bhanabhai Naranbhai Limbasiya Exh.73 had sold the land bearing S.No.35, a part of village Giriya on 2.10.90 to one Vithalbhai Bhanjibhai and that this land was sold for a consideration of Rs.14,000/-, which was agricultural land and the certified copy of the sale document Exh.74 has been produced. He has also stated that land bearing S.No.35 of village Giriya is situated about 3 to 4 Kms.away from the acquired lands of the claimants and has stated that it is not true that his land of S.No.35 of village Giriya was hilly and uneven land, but he has admitted that there are no residential houses except two to 5 small huts. In cross-examination he has submitted that lands of S.Nos.89, 90 and 91 of the claimants are situated near Amreli-Rajkot Road and that it is surrounded by the residential houses, godowns etc. and has also stated that it is adjacent to posh area and

the area is developed one. He has also stated that he is conversant with this locality since 1978, that land bearing S.No.35 of village Giriya is on interior side from the road and is practically situated on Giriya-Varasada road. He has admitted that the document of the sale of the land bearing S.No.35 had not been returned from the Collector's Office and that the Deputy Collector (Stamp Duty) had issued a notice under S.32C of the Stamp Duty.

13.14 On behalf of the appellants, the order of the Reference Court has been challenged mainly on the following grounds:-

(a) The Reference Court ought to have believed the deposition of D.W.No.1 examined at Exh.69, who had passed the award Exh.38 because he had taken into consideration sale instances for 5 years and because he had passed the Award Exh.38 looking to the market value as per the sale instances of village Giriya in the list of the 5 years sale instances at Exh.35;

(b) That the Reference Court had erred in holding that S.Nos.90/1 and 91 are likely to be converted into non agricultural lands;

(c) It was argued with reference to the deposition of D.W.No.2 at Exh.71 that as per the copy of the sale deed Exh.72 the said land admeasuring 1000 sq.mts. was sold for Rs.18500/- on 2.11.88, that means at the rate of Rs.18.5 per sq.mt.and this price at which the land was purchased by the claimants should be considered to be the best evidence and that this should form the acid test for the purpose of determining the rate at which the compensation should be awarded.

13.15 We have considered the entire evidence in this case in its entirety and have also gone through the analysis of the evidence, as has been made by the Reference Court. It is clearly born out that the lands acquired in these cases are of S.No.91 (in Land Reference Case Nos.82/95, 83/95 and 84/95), S.No.89 (in Land Reference Cases Nos.85/95, 86/95 and 87/95) and S.No.90/1 (in Land Reference Case No.1/96). So far as the geographical situation of these lands and as to whether these lands are in developed area or in the vicinity of the developed area is concerned, we find that the evidence, which has come from both the sides, is not at much variance inasmuch as the lands are on the eastern or

western side of the Amreli-Rajkot Highway and also as per the Map Exh.39. The lands of various S.Nos., to which the reference has been made herein-above, are all situated in a developed area and the same are around the acquired land. If the lands of various S.Nos. around the acquired land are developed, there is no reason to say that the acquired lands are not comparable with the lands of various S.Nos. such as S.Nos.38, 39,40, 41, 42, 43, 44, 49, 50, 51 and 56. The situation of 'Surya Garden Hotel' in S.No.39 and the existence of godowns for Scoters and residential premises between the acquired lands of the claimants and the 'Surya Garden Hotel' is also established. Similarly the situation of the Cement Factory between the lands of S.Nos.39 and 91 is also made out. The deposition with regard to the municipality pavilion, land of Aerodrome, houses etc. on the eastern side of the road alongwith residential houses also cannot be disbelieved. Thus in absence of any effective and specific cross-examination with regard to the development of the area in question, it cannot be disbelieved that the lands around the acquired lands are developed area. In the judgment itself at page 20 the Reference Court has recorded as under:-

"There is no cross-examination with respect to the development of area and therefore there is nothing to disbelieve the say of the witness that the area nearby acquired lands are not developed."

It appears that the word "not" before the word 'developed" is a mistake typographical or otherwise and on that basis no argument could be built up to say that the lands nearby the acquired lands are not developed.

13.16 The depositions with regard to the acquired lands that it has wells, pacca houses and the trees, the details of which have been mentioned hereinabove, has remained untrammeled in the cross-examination of P.W.No.1. All these details do add to the quality of the acquired land for the purpose of fixing the rate at which the compensation is to be given. The case that lands of S.No.89,which have been acquired, are non agricultural lands and the acquired lands of S.Nos.90/1 and 91 are likely to be converted as non agricultural land has also remained intact. Even D.W.No.1, who has been claimed as a star witness on behalf of the Department by the appellants, has admitted that lands of S.Nos.90/1 and 91 are likely to be converted into non agricultural lands. The lands of both these S.Nos.90 and 90/1 are also surrounded by non agricultural lands and are in posh locality near Amreli township. Even if a land is not a

non agricultural land, if the same is surrounded by non agricultural lands and the same is likely to be converted into non agricultural land as per the say of the Land Acquisition Officer himself, it is certainly an important and relevant factor for the purpose of fixing the rate at which the compensation is to be awarded at par or with close proximity with the rate in respect of non agricultural land. D.W.No.2, who was examined by the Department, has also admitted that going further towards Amreli town,there are godowns, show room of Bajaj Scooter, Jalaram Commercial Complex, Meghnath commercial Centre, and Surya Garden Hotel etc. He has also admitted that area around this land are most developed and posh area of Amreli City and further that the lands of of S.Nos.90 and 91 are situated near the above S.No.43. D.W.No.3, who was examined at Exh.73 by the Department, had sold out the land bearing S.No.35 - a part of Village Giriya on 2.10.90 to one Vithalbhai Bhanjibhai. This witness in the cross-examination has admitted that lands of S.No.89, 90 and 91 of the claimants are situated near Amreli-Rajkot road and that it is surrounded by the residential houses, godowns etc. This witness has also stated that it is adjacent to posh area and this area is a developed one.

13.17 So far as the contention raised on behalf of the appellant that D.W.No.1, examined at Exh.69, ought to have been believed because he had considered the sale instances for 5 years is concerned, it may be pointed out that the judgment has to be based on the analysis of the depositions made by witnesses of both the sides. The deposition made by a particular witness could not be considered in isolation. True it is that this witness D.W.No.1 had considered the sale instances for agricultural lands while passing the Award, but it is established by the depositions made by the witnesses of the claimants as also the deposition made by the witness examined by the Department that lands of S.Nos.90/1 and 91 were likely to be converted into non agricultural lands and in that view of the matter, the market price for lands of S.Nos.90/1 and 91 could not be considered by assuming them to be agricultural lands, more particularly when the lands of S.Nos.90/1 and 91 are surrounded by non agricultural lands. Witness D.W.No.1 himself has also admitted on the basis of the Map Exh.39 that the lands of S.Nos. in question are touching the boarder of Amreli town and are near the lands bearing S.Nos.40,46 and 50 and further that the lands of these three S.Nos. are also acquired for the same 'Thebi Irrigation Project'. Therefore, even if it is correct that he had considered the sale instances of previous 5 years, the witness

D.W.No.1 has applied the standards of agricultural land even with regard to the non agricultural lands or the lands, which were likely to be converted into non agricultural lands, although the acquired lands are surrounded by non agricultural lands. Therefore,in our opinion, it is not a case of disbelieving this witness as a whole. The Reference Court has made a critical analysis of the depositions made by this witness and the depositions made by the other witnesses and on a detailed and proper appreciation of the evidence, it has formed the opinion that as a Land Acquisition Officer, this witness did not apply the correct and relevant standards for the purpose of determination of the prices of the land. In view of the depositions made by several witnesses including the Departmental witnesses, it also cannot be said that the Reference Court has erred in holding that S.Nos.90/1 and 91 were likely to be converted into non agricultural lands.

13.18 Having discussed the Geographical situation of the acquired lands, as aforesaid, and having considered the facts with regard to the development of the concerned area and the area nearby, as also the existence of pacca wells and certain number of constructed houses and the various types of trees,etc in the acquired lands in question, we may now proceed to consider as to whether the learned Judge has erred in determining the compensation at the rate of Rs.400/- per sq.mt.

(A) On the basis of the evidence available in these cases i.e. oral as well as documentary evidence including that of the sale instances, it has to be agreed on all hands that the rate at which the compensation was granted by the Land Acquisition Officer i.e. at the rate of Rs.12/- per sq.mt. for Bagayat land and Rs.8/- per sq.mt. for Jarayat land and Rs.50/- per sq.mt. for non agricultural land is wholly inadequate and was extremely on lower side. In this regard, the learned Reference Court, in our opinion, has rightly observed that, "one should take note that now a days i.e. relevant time when the Notification under S.4 was issued in the year 1992 and the Award was passed in these cases, the price of Rs.8/- to Rs.12/- per sq.mt.for Bagayat and Jarayat land and Rs.50/- per sq.mt. for non agricultural land was unthinkable in the concerned area i.e. at the end of the Amreli township when the land is touching Amreli-Rajkot Highway."

(B) In case of lands of S.Nos.40 and 43,which were acquired for the same 'Thebi Irrigation Project' in Land Acquisition Case No.11/92, in the Award pertaining to land bearing S.No.43, the compensation was granted at the rate of Rs.275/per sq.mt. The lands of this S.No.43 are also touching the boarder of the said Amreli-Rajkot road. It may be noted that so far as the lands of S.No.40 are concerned, they are on the interior side of the road for which the compensation was awarded at the rate of Rs.70/per sq.mt.

(C) In case of certain other lands in Land Acquisition Case No.7/91 the Land Acquisition Officer had awarded compensation at the rate of Rs.150/- per sq.mt.

(D) In case of lands of S.No.39 touching the road and just opposite the land of Aerodrome, Town Planning Department had assessed the value and fixed the price of Rs.217/- per sq.mt. vide its letter dt.16.10.92. It has also come on record that the land of S.No.39 is a new tenure land and to convert this land for non agricultural purposes, the Collector, Amreli had fixed the premium at the rate of Rs.300/- per sq.mt. vide his letter dt.27.11.92 (copy at Exh.46).

(F) In cases of lands of S.No.39, 40, 43, 43/5, 40/4, 43/2and 43/4 acquired for the same 'Thebi Irrigation Project', the rate of compensation was fixed at higher rate than the rate fixed in the present case. The same is the position with regard to some other S.Nos. for example S.No.56, which is only 300 mtrs. away from the acquired land and this land of S.No.56 was sold by registered sale deed No.900 dt.11.5.92 at the rate of Rs.690/- per sq.mt. The lands of S.No.34 and 40/9, which are about 200 mtrs. away, were also sold at a high price.

(G) The witness P.W.No.2,who had purchased plot Nos.17 and 18 in S.Nos.34 and 40/9 had paid Rs.130/- per sq.mt. vide registered sale deed dt.28.7.88. The distance between these plots and acquired land is only about 400 to 500 ft. This witness had sold out the part of Plot No.17 admeasuring 138 sq.mts. by registered sale deed dt.16.1.91 at the price of Rs.400/- per sq.mt. He had also sold out the land admeasuring 143

sq.mts. out of Plot No.17 through registered sale deed on 16.1.91 at the rate of Rs.400/- per sq.mt.

(H) Witness P.W.No.3 had purchased the land of Plot No.6 out of S.Nos.34 and 40/9 through registered sale deed dt.28.12.92 at the rate of Rs.699/- per sq.mt. There is difference of only 18 days between the date of the execution of this sale deed dt.28.12.92 Exh.51 and the date of Notification under S.4 in the present cases and, therefore, the argument that it is a case of sale deed post Notification is not effectively available to the appellant as such and this evidence could not be discarded, merely because the sale deed was executed after 18 days from the date of the Notification under S.4 in the present cases.

(I) While referring to the deposition of witness P.W.No.6 (Exh.56) it may be pointed out that the document Exh.57 shows that plot No.10 of land S.Nos.34 and 40/9 was sold at the rate of Rs.415/per sq.mt. and it has also come on record that the acquired lands of S.Nos.90/1, 91 and 89 are nearer to the lands of S.Nos.34 and 40/9. Similar is the position with regard to the document Exh.58 pertaining to Plot No.60 of the lands of S.Nos.34 and 40/9 and this document Exh.58 executed on 11.10.91 shows that the land was sold for a consideration of Rs.425/- per sq.mt. on 11.10.91 i.e. a date prior to the date of the issue of the Notification under S.4 in the present cases. Similar is the position with regard to the document Exh.60 in the deposition of P.W.No.7,who had sold out Plot No.14 of S.No.41 at a price of Rs.292/- per sq.mt. on 5.1.91.

(J) D.W.No.2, who was examined by the Department,on the question of market value has deposed that the agreement to sale of his land bearing S.No.89 in village Giriya was fixed at Rs.300/- per sq.mt. and that too prior to 2.11.88. True it is that in the document Exh.72 the price mentioned was less, but in this regard the notice had also been issued for paying less Stamp and even for the purposes of Stamp Duty the Government had fixed the price at Rs.150/- per sq.mt. while this land concerned in Exh.72 is about 4 Kms. away from the residential houses of Amreli city and it is

far away from the lands of the claimants, which fact indicate that the market rate of the acquired lands must be on higher side in comparison to the lands concerned in Exh.72.

(K) It was argued on behalf of the appellants that as per D.W.No.2, who produced the copy of the sale deed Exh.72, the land concerned in Exh.72 was sold out for Rs.18,500/- admeasuring 1000 sq.mts., which shows that the land was purchased at the rate of Rs.18.5 per sq.mt. only and it was contended that this must be the best evidence. It may be at once pointed out that firstly sale deed was executed on 2.11.88 and it can not be said to have been issued at the point of time of Notification under S.4. There is a difference of about 4 years in the date of the execution of this document and the date of the issue of the Notification under S.4 in the present cases i.e. in December 1992. Secondly, it is a matter of common knowledge that the agreement to sale is generally arrived at much earlier as compared to the actual date of the execution and it has come on record in this case that there was an agreement to sell and as per that agreement the price fixed was Rs.300/- per sq.mt., but in order to save the stamp duty, the less amount was mentioned and for that purpose the notice under S.32C had also been issued by the Collector,Stamp Duty. Such practices in the sale transactions of immovable property are not uncommon,but even if it is assumed that in a given case the price agreed in the agreement to sale was higher and in fact at the time of execution of the sale deed a lower rate was mentioned, it would reflect the practice to avoid the payment of stamp duty,but the same cannot impinge upon the actual market value. On the contrary, notices issued by the Collector, Stamp Duty shows that the price at which the sale deed was sought to be executed was not the real price and the actual price was much higher than the one mentioned in the sale deed. Thus,the two reasons, as given out hereinabove, would make it clear that for a land admeasuring 1000 sq.mts. in the case of Exh.72, Rs.18,500/- could not be real prevailing market rate.

(L) The Reference Court while applying the ratio of the decision in case of Special Land Acquisition Oficer and another v. Patel Bhagwandas and

others, reported in 1996(1) GLR 481 has rightly observed that the sale deeds produced by the claimants vide Exhs.51, 53, 57 and 60 seem to be the best evidence so far as these cases are concerned and further that the Land Acquisition Officer while passing the Award in Land Acquisition Case No.1/94 on 29.10.97 had observed in Award Exh.82 that during the year 1991-92 the market value in this locality was found to be Rs.400/- to Rs.500/- per sq.mt. and in that Award he had fixed the compensation at Rs.310/per sq.mt. for acquired lands bearing S.No.42/4 for non agricultural land.

(M) The Reference Court has also observed at page 50 of the Award while referring to Land Acquisition Cases Nos.7/91, 23/91 and 11/92 that the Land Acquisition Officer had practically relied upon all the sale instances and had given adequate compensation more than the awarded compensation given to the present claimants. The Land Acquisition Officer had stated that revised Awards were also passed in Land Acquisition Case Nos.11/92, 23/91 and 7/91 and the amount of compensation in the previous Awards was enhanced, but for the reasons best known to the Land Acquisition Officer in the present cases he did not award the compensation at the revised rates. For this discrepancy there appears to be no reasonable explanation.

(N) Thus, the order passed by the Land Acquisition Officer, in our opinion, can not be said to be in conformity with the decision of the Supreme Court rendered in the case of AIR 1988 SC 943 (Administrator Genl. of West Bengal v. Collector Varanasi) according to which the prices fetched for lands similar to acquired lands with similar advantages and potentialities at or about time of preliminary Notification constitute the best evidence.

13.19 On consideration of the evidence in its entirety in these cases, we find that while the Reference Court has rightly rejected the claim of separate compensation for trees, wells etc. because they are already included in the potentiality of the land, the Reference Court has rightly fixed the rate at which the compensation is to be awarded at the rate of Rs.400/- per sq.mt. in case of non agricultural land. But the Reference Court has certainly committed an error in awarding compensation at

the rate of Rs.400/- per sq.mt. even with regard to the lands of the claimants, which had in fact not been converted for non agricultural use. Ofcourse, the positive evidence is available on record to show that the concerned land in S.No.90/1 (in Land Acquisition Case No.1/96) was likely to be converted to non agricultural land and also the lands acquired from S.No.91 (in Land Acquisition Cases Nos.82/95, 83/95 and 84/95) were likely to be converted into non agricultural land and,therefore, the Reference Court ought to have kept the reasonable difference between the rate at which the compensation was granted in case of the acquired lands of S.No.89, which were clearly non agricultural lands and the acquired lands of S.Nos.90/1 and 91, which were likely to be converted to non agricultural land, but in fact were not converted as such. The actual conversion of a land to non agricultural land must have its own impact on the market value of the land and there is a marked difference between the actual conversion and the likely conversion. Even if it is taken that the lands, which were likely to be converted to non agricultural lands, are as good as non agricultural lands,yet it must make a difference so far as the rate at which the compensation is to be awarded. Therefore, in the facts and circumstances of this case, while we are not inclined to interfere with the rate of compensation which has been awarded by the Reference Court at the rate of Rs.400/per sq.mt. in case of non agricultural land out of S.No.89 concerned in the Land Reference Cases No.85/95, 86/95 and 87/95, we do not agree with the same rate of compensation in respect of the lands pertaining to S.No.90/1 (in Land Reference Case No.1/96) and S.No.91 (in Land Reference Cases Nos.82/95, 83/95 and 84/95). Whereas it has also come on record that for the purpose of conversion of agricultural lands in the case of the lands of the identical nature in the vicinity and close proximity of the lands of S.Nos.90/1 and 91 the Collector himself had ordered to pay the premium of Rs.300/- per sq.mt. for lands of S.No.39 for such conversion vide his letter dt.27.11.92 (Exh.46) i.e. again a date in proximity with the date of the issue of the Notification under S.4 in the cases at hand and keeping in view the rate at which the compensation had been granted in several other cases of identical nature, to which reference has already been made herein-above while discussing the evidence, we find that so far as the lands of S.Nos.90/1 and 91, which were found to be likely to be converted to non agricultural lands, are concerned, the claimants are entitled to the compensation to be paid at the rate of Rs.300/- per sq.mt. only instead of Rs.400/- per sq.mt and the order passed by the Reference Court is,therefore, modified as under:-

"While the claimants shall be entitled to compensation to be paid at the rate of Rs.400/- per sq.mt. as decided by the Reference Court in case of lands of S.No.89 (in Land Reference Cases Nos.85/95, 86/95 and 87/95) i.e. non agricultural lands, the concerned claimants shall only be entitled to the compensation at the rate of Rs.300/- per sq.mt. instead of Rs.400/- per sq.mt. as ordered by the Reference Court with regard to the land of S.No.90/1 (in Land Reference Case No.1/96) and that of S.No.91 (in Land Reference Cases Nos.82/95, 83/95 and 84/95), which are likely to be converted to non agricultural lands."

14. First Appeals Nos.1880/97 to 1894/97 (15 in all) relating to village Giriya are directed against the Reference Court's common order dt.9.1.97 passed in main Land Reference Case No.69/95 and other References. In these cases, the Notification under S.4 was issued on 10.12.92 followed by Notification under S.6 dt.18.2.93. The Special Land acquisition Officer passed the Award on 23.2.95 awarding compensation at the rate of Rs.8/- to Rs.12/- per sq.mt. The claimants presented cases for Reference under S.18 claiming compensation at the rate of Rs.300/- per sq.mt. The Reference Court has found the claimants to be entitled to be paid the compensation at the rate of Rs.75/- per sq.mt. with other benefits.

14.1 In these Appeals the claimants have adduced oral evidence and have also produced documentary evidence and the Department had produced documentary evidence. However, no sale transaction was relied upon by the claimants and the Department did not examine any witness to prove sale instances produced by them and, therefore, the Reference Court has rightly held that the sale instances produced by the opponents cannot be looked into. The consideration of the question of compensation on the basis of crop potentiality has also been rightly rejected. The claimants placed reliance on previous Award passed in Land Reference Case No.171/93 (Exh.19) and the Award passed in main Land Reference Case No.74/93 (Exh.20) about which the learned APP did not say anything. The Reference Court has placed reliance on this Court's decision in the case of State of Gujarat v. Gobar Rupa,reported in 1995(1) GLR 1. It has found that the lands in question have been acquired for the same 'Thebi Irrigation Project' by the same acquiring body and the Notification under S.4 had also been published in the year 1990 and in the Land Reference Cases Nos.163/93 to 183/93, the main Land Reference Case being 171/93, the compensation was awarded at the rate of Rs.75/- per

sq.mt. and similarly in main Land Reference Case No.74/93 (group matter) the compensation was awarded at the rate of Rs.75/- per sq.mt. as per Exhs.19 and 20. The claimants in the present cases were willing to accept the same amount awarded to the claimants of Exh.19 and Exh.20 and the Reference Court has also noted that on this point,the learned APP, who appeared before the Reference Court, had nothing to say considering the previous Awards Exhs.19 and 20 and considering that the lands acquired in the present cases are also adjoining to each other villages of Baxipura, Giriya and Amreli. It has also been noticed that there is no dispute about the fact that there was a gap of two years so far as the Notification under S.4 of the Land Acquisition Act is concerned, but as the claimants themselves had submitted that they were willing to accept the amount awarded to the claimants in Land Reference Cases in which the previous Awards had been passed, the Reference Court has found the claimants to be entitled to compensation at the rate of Rs.75/- per sq.mt. We do not agree with the argument raised on behalf of the appellants that the previous Awards could not be relied upon. In the facts of this case, the situation and the quality (fertility) of the concerned land is identical to the lands, which were concerned in the previous award and nothing had been pointed out before us so as to treat these lands to be either dissimilar or to be inferior in quality and fertility. We, therefore, do not find any basis to interfere with the order passed by the Reference Court in all these Appeals.

15. First Appeals Nos.2061/98 to 2066/98 (6 in all) relating to village Giriya are all directed against the Reference Court's common order dt.24.12.97 passed in main Land Reference Case No.4/97 and other Land Reference Cases Nos.2/96, 17/96 to 20/96 (6 in all). In these cases, the Notification under S.4 was published in the news paper on 29.11.92 and 30.11.92, the same was published in the Gazette on 10.12.92 and affixed at the concerned places on 14.12.92. The Notification under S.6 was published on 18.2.93. The Special Land Acquisition Officer published the Award on 23.2.95 awarding the compensation at the rate of Rs.5/- per sq.mt. for Jirayat industrial purposes land and Rs.8/- per sq.mt. for Jirayat land and Rs.12/- per sq.mt. for Bagayat land. The claimants presented cases for Reference under S.18 claiming compensation at the rate of Rs.200/- per sq.mt. The Reference Court by its common order dt.24.12.97, as aforesaid, has held that the claimants are entitled to compensation at the rate of Rs.75/- per sq.mt. alongwith other benefits.

15.1 This group of matters is exactly identical to the group of First Appeals Nos.1880/97 to 1894/97 as concerned in para 14.1 herein-above. The lands were acquired for the same Irrigation Project, the claimants relied upon the previous Award Exh.19 in Land Reference Cases Nos.163/93 to 183/93, wherein the main Land Reference Cases was 171/93, in which compensation was awarded at the rate of Rs.75/- per sq.mt. It has been found that the land has been acquired for the same Project, acquiring body is the same, the lands were adjoining to each other villages of Giriya, Baxipura and Amreli town and it was not disputed that there was a gap of two years so far as the Notification under S.4 of the Land Acquisition Act is concerned, but the claimants themselves expressed their willingness to accept the compensation at the same rate at which it was awarded to the claimants in the Land Reference Cases concerned in the previous Award. It has been found that the lands are similar and are of same quality (fertility). Nothing has been pointed out to treat these lands to be different than the lands, which were concerned in the previous Award Exh.19 either from the point of view of location or from the point of view of quality and fertility. The Reference Court has considered the previous award and has awarded compensation at the rate of Rs.75/- per sq.mt. We do not find any reason to interfere with the order passed by the Reference Court in these matters also.

16. The upshot of the adjudication, as aforesaid, is as under:-

(i) The group of First Appeal Nos.6184/95 to 6203/95 (20 in all) are hereby dismissed with no order as to costs.

(ii) The group of First Appeal Nos.5289/96 and 5290/96 (2 in all) are hereby dismissed with no order as to costs.

(iii) The group of First Appeal Nos.410/98 to 417/98 (8 in all) are allowed in following terms with no order as to costs:-

A. In each of the References concerned in these matters the compensation read with the calrification under para 4.9 is to be paid as under:-

(i) In respect of agricultural land Rs.160/- per sq.mt.

(ii) In respect of non agricultural land Rs.240/per sq.mt.

B. In respect of land Reference Case No.7/96 for 21 godowns, the compensation shall be payable by taking the annual rental income to be Rs.1,04,700/- multiplied by 10 instead of 20.

The order passed by the learned Reference Court that even for agricultural land the claimants are entitled for compensation at the rate of Rs.240/per sq.mt. cannot be sustained. The same is accordingly set aside to the above extent.

(iv) The group of First Appeals Nos.2073/98 to 2078/98 (6 in all) are allowed in the following terms with no order as to cost. In each of the references concerned in these matters the compensation is to be paid as under:-

(i) in respect of agricultural land Rs.160/per sq.mt.

(ii) in respect of non agricultural land Rs.240/- per sq.mt.

(v) First Appeal No.1166/97 is hereby dismissed with no order as to costs.

(vi) Group of First Appeals No.269/97 to 275/97 (7 in all) are hereby dismissed with no order as to costs, but so far as First Appeal No.272/97 is concerned,the concerned Reference Court may pass appropriate orders in the light of the observations made in para 7.5 of this Judgment with reference to the alleged claim of respondents Shantaben Motiram and Samjuben Motiram.

(vii) The group of First Appeal Nos.910/96 to 920/96 (11 in all) are hereby dismissed with no order as to costs.

(viii) The Group of First Appeal Nos.1017/96 to 1050/96 (34 in all) are hereby dismissed with no order as to costs.

(ix) The group of First Appeal Nos.7/97 to 13/97 (7 in

all) are hereby dismissed with no order as to costs.

(x) The group of First Appeal Nos.2358/97 and 2359/97 (2 in all) are hereby dismissed with no order as to costs.

(xi) First Appeal No.2546/97 is hereby dismissed with no order as to costs.

(xii) The group of First Appeal No.989/98 to 995/98 (7 in all) are partly allowed as under:-

"While the claimants shall be entitled to compensation to be paid at the rate of Rs.400/- per sq.mt. as decided by the Reference Court in case of lands of S.No.89 (in Land Reference Cases Nos.85/95, 86/95 and 87/95) i.e. non agricultural lands, the concerned claimants shall only be entitled to the compensation at the rate of Rs.300/- per sq.mt. instead of Rs.400/- per sq.mt. as ordered by the Reference Court with regard to the land of S.No.90/1 (in Land Reference Case No.1/96) and that of S.No.91 (in Land Reference Cases Nos.82/95, 83/95 and 84/95), which are likely to be converted to non agricultural lands."

To this extent the order of the Reference Court shall stand modified.

(xiii) The group of First Appeal Nos.1880/97 to 1894/97 (15 in all) are hereby dismissed with no order as to costs.

(xiv) The group of First Appeal Nos.2061/98 to 2066/98 (6 in all) are hereby dismissed with no order as to costs.

This batch of 127 First Appeals in fourteen groups, as above, are decided accordingly.